S. HRG. 101-748

EQUAL ACCESS TO VOTING ACT OF 1989

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 675

A BILL TO ELIMINATE DISCRIMINATORY BARRIERS TO VOTER REGISTRATION, AND FOR OTHER PURPOSES

MAY 10, 1989

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EQUAL ACCESS TO VOTING ACT OF 1989

WEDNESDAY, MAY 10, 1989

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:35 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Paul Simon (chairman of the subcommittee) presiding.

Also present: Senators Biden, Metzenbaum, Kennedy, Specter, and Hatch.

OPENING STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. The subcommittee will come to order.

We are meeting on a bill that has been introduced by Senator Cranston, Senator Kennedy, Senator Specter, and myself, to try to improve voter registration and improve voter turnout. We are particularly concerned, I think all of us, with the voter turnout in minority areas and among the very young, and we hope we have a vehicle that can help in improving that turnout. That is what the hearing is all about, to find out where we are and, if the bill should be changed or improved in any way, how we should do it.

I am very pleased to have a distinguished list of witnesses today, including of course the chief sponsor of the bill and also a former colleague of mine in the House, Barbara Jordan, and a resident of the State of Illinois, Rev. Jesse Jackson.

[Text of Senate bill 675 follows:]

II

101ST CONGRESS
1ST SESSION

S. 675

To eliminate discriminatory barriers to voter registration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 17 (legislative day, JANUARY 3), 1989

Mr. CRANSTON (for himself, Mr. KENNEDY, Mr. SIMON, Mr. SPECTER, Mr. ADAMS, and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To eliminate discriminatory barriers to voter registration, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Access to Voting Act of 1989".

FINDING AND PURPOSE

SEC. 2. (a) The Congress finds that restrictions on voter registration have had a discriminatory impact on the basis of race, color, national origin, age, and disability, and have operated to deprive persons of the equal protection of the laws

by denying them the opportunity to exercise their fundamental right to vote.

(b) The Congress hereby declares that in order to secure the constitutional right of citizens to enjoy equal access to the right to vote, it is necessary to eliminate barriers to voter registration.

(c) The purpose of this Act is to ensure that all citizens enjoy full and equal access to the vote, regardless of race, color, national origin, sex, age, or disability.

REVIEW OF STATE VOTER REGISTRATION PROGRAMS

SEC. 3. In order to assure that the right of citizens of the United States to vote is not denied or abridged on account of voter registration requirements which have a discriminatory impact upon individuals on the basis of race, color, national origin, sex, age, disability, or other factors, the Attorney General shall establish and carry out an ongoing program to review and assess the voter registration requirements of each State not less than once every four years and to require the implementation of such programs as may be necessary to increase voter registration where barriers to registration have had a discriminatory impact on the basis of race, color, national origin, sex, age, disability, or other factors, or have operated to deprive persons of the equal protection of the laws by denying them the opportunity to exercise their fundamental right to vote. Each State shall make available to the Attorney General such information as

the Attorney General determines is necessary to carry out the provisions of this Act.

SUBMISSION OF STATE PLAN

SEC. 4. (a) Within one year after the date of a determination by the Attorney General made pursuant to the provisions of this section, the chief State election official of each State which the Attorney General determines has barriers to registration which have had a discriminatory impact on the basis of race, color, national origin, sex, age, disability or other factors or have operated to deprive persons of the equal protection of the law by denying them the opportunity to exercise their fundamental right to vote, shall submit to the Attorney General, for approval by such Attorney General, a State plan designed to eliminate such barriers. For the purposes of this Act, "barriers to registration" means limitations on the availability of opportunities to register, inadequate facilities or procedures to assure that any individual who is eligible to vote is afforded the opportunity to register, restrictions on the time, place, and manner provided for voter registration, and such other restrictions or limitations which the Attorney General shall, by regulations, specify. A State shall be deemed to have barriers to registration if the per centum of minority registration to nonminority registration is less than the per centum established by the Attorney General by regulation. The Attorney General shall issue the regulations provided for under this section not later than 180 days after

the date of enactment of this Act and shall make the determinations provided for under this section not later than 180 days after issuance of such regulations.

(b) The Attorney General shall, within 120 days after the date required for submission of a plan under subsection (a), approve or disapprove such plan or any portion thereof. The Attorney General shall approve such plan if the Attorney General determines that it was adopted after reasonable notice and hearing and includes all provisions necessary to satisfy the requirements of this Act.

(c) Once the State plan has been approved by the Attorney General, such plan shall be implemented by the State and shall apply to the first general election following approval, and to all elections thereafter, except that in the case of any State which has maintained, for two successive general elections, the per centum of minority registration to nonminority registration at or above levels which the Attorney General has established the provisions of this Act shall not be applicable for so long as such State maintains or exceeds such per centum of minority registration to nonminority registration. If a disparity between minority and nonminority registration rates continues after two successive general elections, the Attorney General shall require modifications of the plan for the purpose of eliminating such disparity.

(d) Any change to a State's voter registration plan after the plan has been approved by the Attorney General shall be submitted to the Attorney General for approval.

(e) Nothing in this Act shall be construed to affect any procedures required by the Voting Rights Act of 1965 (42 U.S.C. 1973aa et seq.).

(f) The determination of the Attorney General under this section shall be based upon statistics compiled by the Director of the Census pursuant to the provisions of the Voting Rights Act of 1965 (42 U.S.C. 1973aa). The Attorney General, in conjunction with the Director of the Census, shall devise a reliable system for compiling statistics on registration rates of voters based on race, color, national origin, age, and disability.

STATE PLAN PROVISIONS

SEC. 5. (a) In the case of any State which the Attorney General has determined pursuant to section 4(a) is required to submit a State plan, the State shall allow an individual to register to vote in the manner provided by a State plan which has been approved under this Act.

(b) The State plan shall include provisions that eliminate barriers to registration and disparities between minority and nonminority registration rates, insure accurate, inclusive and uniform voter registration lists, insure that all eligible voters are permitted to exercise their right to vote, and such other

provisions as the Attorney General determines necessary to carry out the purposes of this Act.

(c) The Attorney General shall establish, through regulations, criteria for determination of whether a State plan submitted under section 4 satisfies the requirements of this Act. In establishing such criteria, the Attorney General shall take into account the need to provide for adequate safeguards to establish the identity, place of residence, and qualifications of individuals seeking to vote and the need to remove unnecessary barriers to the exercise of the right to vote. In determining whether a State plan satisfies the requirements of this Act, the Attorney General shall evaluate whether the provisions of such plan are apt or more apt to result in elimination of barriers to registration than the procedures described in subsection (d).

(d) The Attorney General may certify that a State plan is in compliance if it meets the criteria set forth in subsections (b) and (c). In determining whether a State plan is in compliance the Attorney General shall consider the extent to which the State plan provides for the establishment of the following procedures—

(1) registration by mail,

(2) registration at any Federal, State, county or municipal agency that serves the public directly and at

any private agency that voluntarily agrees to register voters,

(3) simultaneous voter registration with applications submitted to the State motor vehicle agency, or

(4) permits any individual who is eligible to register to vote to register and vote on the date of the election involved.

REMOVAL AND CHALLENGES

SEC. 6. The regulations promulgated by the Attorney General pursuant to section 5(c) shall—

(1) require satisfactory assurances that no voter will be removed from the list of eligible registered voters unless such voter has—

(A) died;

(B) changed voting residence, more than 30 days previously, from the voting jurisdiction which maintains the voter registration list for the place in which the voter was previously registered;

(C) been convicted of a criminal offense which, under State law, results in the denial of the right to vote, and no appeals remain;

(D) been adjudicated mentally incapacitated which, under State law, results in the denial of the right to vote; or

(E) requested that their name be removed from the voter registration list; and

(2) require that the State plan sets forth the basis for challenges to voters or registrants and provide assurances that—

(A) challenges will only be made in writing by persons designated by State law,

(B) any challenged individual who has sufficient documentation as to eligibility to vote be permitted to vote, and

(C) challenged individuals who do not have sufficient documentation be permitted to vote by affidavit ballot and be informed of such right.

The State plan shall provide that the validity of challenges shall be determined within a fixed period of time after the polls close.

RESPONSIBILITY OF THE ATTORNEY GENERAL

SEC. 7. (a) The Attorney General is authorized to administer this Act and to make such rules, regulations, and orders as the Attorney General deems necessary or appropriate for the efficient and expeditious administration of this Act.

(b) The Attorney General shall provide advice and technical assistance to States in developing voter registration plans and in establishing and maintaining voter registration systems in accordance with this Act.

(c)(1) The Attorney General shall provide for the conduct of a study to determine the impact on voter registration

of the various procedures set forth in section 4(d) on achieving the purposes of this Act.

(2) The Attorney General shall report to the Congress every 2 years on the effectiveness of efforts to establish and maintain voter registration procedures that eliminate barriers to exercise of the right to vote.

ENFORCEMENT

SEC. 8(a). The Attorney General shall prepare and publish proposed regulations within 120 days, setting forth an implementation plan, or portion thereof, for a State if—

(1) the State fails to submit a State plan for voter registration, pursuant to section 4(a), which meets the requirements of this Act; or

(2) the plan, or any portion thereof, submitted for such State is determined by the Attorney General not to be in accordance with the requirements of this Act or any rules or regulations prescribed by the Attorney General and such State fails, within 90 days after notification by the Attorney General, to revise a State plan for voter registration as required by the Attorney General.

(b) Whenever, on the basis of any information available to the Attorney General, the Attorney General determines that any person, State, or other governmental body is in substantial violation of any requirement of a voter registration plan submitted under this Act, the Attorney General shall

notify such person, State, or governmental body, and the State in which the plan applies, of such finding. If such violation extends beyond the 30th day after the date of the notification, the Attorney General shall—

(1) issue an order requiring such person, State, or governmental body to comply with the requirements of such plan; or

(2) bring a civil action in accordance with subsection (b).

(c) The Attorney General may commence a civil action for a permanent or temporary injunction against any person, State, or other governmental body that—

(1) violates or fails or refuses to comply with any order issued under subsection (a) of this section; or

(2) violates any requirement of a voter registration plan submitted under the provisions of this Act more than 60 days after being notified by the Attorney General under subsection (a)(1) of a finding that such person, State, or body is violating such requirement.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation occurred or in which the defendant resides, and such court shall have jurisdiction to restrain such violation, to require compliance, and to assess a civil penalty. In the case of any State which the Attorney General has issued an order

based upon section 8(a), the court shall order immediate implementation of the State plan developed pursuant to section 8(a) during the pendancy of any action brought under this section.

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by this Act, the Attorney General or any aggrieved person may institute an action for preventive relief, including an application for a temporary or permanent injunction, or a restraining order.

(e) An aggrieved person may commence a civil action against any person, including the United States or any State, or other governmental instrumentality, who is alleged to be in violation of a voter registration plan submitted pursuant to section 4(a) after giving notice of the violation (i) to the Attorney General, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the plan.

(f) The district courts shall have jurisdiction, without regard to the amount in controversy, to enforce such an approved State plan, or to order any person to perform such act or duty, as the case may be.

(g) If the Attorney General or State has commenced a civil action to require compliance with the plan but is delinquent in prosecuting such action, an aggrieved person may intervene as a matter of right.

(h) Notice under this section shall be given in such manner as the Attorney General shall prescribe by regulation.

(i) Any order of the Attorney General under this Act shall be reviewable, by the United States Court of Appeals for the Circuit in which the State involved is located, on the filing of a petition by any aggrieved person. The appellee shall not be liable for costs in such court.

(j) In any action under this section, the Attorney General, if not a party, may intervene as a matter of right.

(k)(1) In any action or proceeding under this Act, the court shall allow any prevailing plaintiff (including an intervening plaintiff), other than the United States, a reasonable attorney fee, together with reasonable costs of litigation.

(2) Fees incurred in complying with the notice requirements of this section or in pursuing the vindication of rights protected under this Act through administrative proceedings, shall be recoverable by a prevailing plaintiff.

PROHIBITIONS AND PENALTIES

SEC. 9. (a) Any person, including any election official, who knowingly and willfully—

(1) registers, or attempts to register to vote under this Act for the purpose of voting more than once in any election;

(2) conspires with any person for the purpose of enabling such person to make false registration to vote

or for the purpose of enabling or encouraging any individual to make such false registration to vote;

(3) falsifies any information for the purpose of establishing eligibility to register to vote under this Act;

(4) takes action which results in the improper removal of any voter from the list of eligible voters based on race, color, membership in a language minority, sex, religion, political affiliation, or for nonvoting; or

(5) intimidates, threatens, or coerces any person for (A) voting or attempting to vote, (B) urging or aiding any person to vote or to attempt to vote, or (C) exercising any right under this Act, or attempts to do so;

shall be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both.

(b) In the case of any second or subsequent conviction under this section, the person convicted shall be fined in accordance with title 18, United States Code, or imprisoned not more than 10 years, or both.

SAVINGS PROVISION

SEC. 10. Nothing in this Act shall be construed to restrict any right which any person may have under any statute, the common law, or the Constitution, to seek enforcement of any voter registration requirement or to challenge any voter registration requirement or plan, or to seek any other relief.

PERMITTING YEAR-ROUND REGISTRATION

SEC. 11. Notwithstanding any other provision of law, Federal, State, county, and municipal agencies that serve the public directly, and any private agency that voluntarily agrees to register voters, shall, during the entire year, offer nonpartisan voter registration services, including distributing voter registration forms, answering questions, assisting in completing such forms, and collecting and forwarding completed registration forms to the proper local election officials.

ASSISTANCE TO STATES

SEC. 12. (a) The Attorney General is authorized to make grants to the chief State election official of any State which has a State plan approved by the Attorney General under this Act in order to carry out the provisions of such plan.

(b) The Attorney General may establish an advisory council of State and local election officials to advise States about eliminating barriers to registration which have a discriminatory impact on the basis of race, color, national origin, sex, age, disability, or other factors, or have operated to deprive persons of the equal protection of the laws by denying them the opportunity to exercise their fundamental right to vote.

(c) Except as provided in subsection (d), in submitting voter registration programs to the Attorney General, each State desiring funds also shall submit a request for funds to

implement such programs, including a description of the intended uses of such funds. The Attorney General shall develop a formula for the allocation of funds to the States and shall allocate funds to the States. In allocating funds, the Attorney General shall take into account the voting age population of the State as established by the current population survey of the Bureau of the Census, the percentage of registered voters in the State, and the current voter registration programs in the State.

(d) If the Attorney General determines that any amount made available to a State will not be required by that State or that a program proposed by a State does not qualify under this Act, the amount not used shall be available for reallocation as determined by the Attorney General, except that the Attorney General shall deposit in the Treasury, as miscellaneous receipts, any amount that is unused at the end of the fiscal year for which such amount was appropriated.

(e)(1) The chief State election official of each State shall administer grants made to that State under this section and shall make such reports with respect to grants as the Attorney General may prescribe by regulation.

(2) Each State may allocate any part of a grant under this Act to a city, county, or other political subdivision of such State if such subdivision conducts voter registration.

(f) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

DEFINITIONS

SEC. 13. As used in this Act, the terms—

(1) "approved State plan" means a State plan for voter registration which has been approved by the Attorney General as in accordance with the provisions of this Act;

(2) "local election official" means the individual who exercises primary responsibility with respect to the registration of qualified voters in a unit of local government;

(3) "chief State election official" means the official, agency, or board of a State who exercises primary responsibility with respect to the registration of qualified voters or with respect to the conduct or supervision of any election for Federal office, or any election to a statewide office in such State, as certified to the Attorney General by such State;

(4) "election" has the meaning given that term in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431);

(5) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Is-

lands, and any territory or possession of the United States;

(6) "unit of general local government" means a city, county, town, parish, village, or other general-purpose political subdivision of a State;

(7) "voter registration list" means the list of all voters registered and eligible to vote in an election; and

(8) "affidavit ballot" means a document or set of documents including—

(A) a statement, made under penalty of perjury as provided by the applicable State or Federal law, signed by the affiant—

(i) certifying that the affiant is qualified to vote in that election;

(ii) providing the address for which the affiant was most recently registered to vote; and

(iii) providing the affiant's current residence address; and

(B) a ballot for the appropriate election—

(i) which will be separated from the statement described in subparagraph (A) once the voter qualifications have been determined as prescribed in subsection (d);

(ii) which contains no information by which the identity of the voter may be determined; and

(iii) which is designed and handled in such a way as to preserve the complete security of the ballot.

(9) "minority" and "nonminority" have the meaning given those terms under the Voting Rights Act of 1965 (42 U.S.C. 1973aa et seq.).

SEC. 14. The Attorney General, in consultation with the heads of other Federal agencies, shall undertake to identify and develop such additional simultaneous applications for voter registration as may be feasible and appropriate to increase voter participation where barriers to registration have had a discriminatory impact on the basis of race, color, national origin, sex, age, disability, or other factors, or have operated to deprive persons of the equal protection of the laws by denying them the opportunity to exercise their fundamental right to vote. Within 18 months after the date of enactment of this Act, the Attorney General shall provide to the appropriate committees of Congress a report on implementation of this provision.

○

Senator SIMON. Before we hear from Senator Cranston, let me call on the other Members of the Senate here for any opening statements.

Senator Specter.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman. I commend you for convening this hearing on this very important bill, of which I am an original cosponsor.

I would broaden the statement about the need to expand voting, not only with the young and the minorities but with everyone. We have seen a very significant decline in participation at the polls, and we ought to do everything we can reasonably to broaden access to all Americans to vote. The concern about voting fraud, however, is a significant one, and we have to be sure that when we make changes in the law, that we have provisions which will have due respect to be sure that only those who are qualified to vote, do vote, and then only vote once.

I have had some experience in the enforcement of the voting laws, as district attorney of Philadelphia. It is as rough and tough a town as there is anywhere in this country about illegal voting practices. I have had occasion to make arrests on voting fraud among Democrats and Republicans alike. It is a little harder to find Republicans in Philadelphia, but there are some who violate the voting laws there, as well as people from all parties.

That is a concern which I have but, subject to that constraint, I do hope that we are able to broaden voting as much as we can, to encourage people to come to the polls and express themselves in a democratic society.

Thank you, Mr. Chairman.

Senator SIMON. Thank you, Senator Specter.

Senator Kennedy, the former chairman of the Judiciary Committee.

OPENING STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Well, Mr. Chairman, I too want to thank you very much for holding these hearings, to welcome Senator Cranston, who has been the real leader here in the U.S. Senate over many years in this particular area of legislation and in many others, and to also recognize the work and support Senator Specter, Senator Metzenbaum, and others have given to this. It is a bipartisan effort, and I am very hopeful that we will have a successful conclusion to this legislative effort.

Mr. Chairman, today we begin the hearings on a key element of the unfinished business of civil rights in America: the need to remove the barriers to voters caused by needlessly restrictive and archaic voting registration procedures. Today's hearing will focus on the problem of barriers to registration around the country. Later hearings will focus on the details of proposed legislation to remove those barriers.

The right to vote is the cornerstone of our democracy. Our history as a Nation has been marked by the steady expansion of the right to vote, from the founding of the Republic when suffrage was generally available only to white male freeholders and restrictions based on race, sex, and religion were common.

Since then, we have seen the goal of universal adult suffrage gradually written into law. Constitutional amendments were adopted, first in 1870 to ban race discrimination, then in 1920 to guarantee the right to vote to women, and then in 1964 to ban poll taxes in Federal elections, and in 1970 to give the vote to 18-year-olds; and in 1965 Congress passed the landmark Voting Rights Act to prohibit practices that result in voting discrimination.

But while the ideal of broad-based voter participation was being incorporated into law, registration procedures were adopted in many States that have the effect—and often the intent—of denying the right to vote to racial, religious, and ethnic minorities. The turn-of-the-century registration laws that swept the country had the good-government purpose of preventing ballot fraud, but those laws also served the ulterior motive of reducing access to the ballot box for the waves of new immigrants reaching our shores. Under these laws, voters were frequently required to register many months before election day, and registration was frequently further restricted by limiting the number and the hours of registration sites.

The legacies of these antiquated voter registration laws continue to plague the United States. In 1988, only 50 percent of the voting age population actually voted. In one survey, 37 percent of nonvoters said they could not vote because they were not registered, and two-thirds of that group said they would have voted if they were registered.

At least partly because of excessive registration requirements, the United States has one of the lowest voter turnout rates among all the major democracies of the world—24th out of 25, according to one study. There is little doubt that restrictive procedures account for much of the lower turnout in the United States.

When we compare the voting rates of registered voters, however, the United States fares better among the other major democracies, ranking 11th out of 24. Thus, although registration reform will not raise voter turnout to the levels in countries where voting is mandatory, it is likely to increase voter participation. One study estimates that easing registration requirements would permit as many as 13 million additional persons to vote.

While restrictive registration procedures interfere with everyone's right to vote, they hit hardest at the minorities who have suffered most from discrimination. In 20 of 28 States for which the Census Bureau maintains separate data by race, black registration trails white registration by an average of almost 9 percentage points, and numerous studies indicate that the discriminatory impact is actually worse because blacks are more likely than whites to over-report being registered. Similarly, registration rates in the Hispanic, Asian, and Native American communities are far lower than among whites.

The bill we have introduced is designed to reduce these discriminatory barriers to registration. It requires the Attorney General to

review the voter registration requirement of each State. States with barriers that have a discriminatory impact, or that deny persons the right to vote, are required to develop plans to reduce the restrictions and increase registration.

The most obvious barriers include limits on opportunities to register, inadequate facilities, and unreasonable restrictions on the time, place, and manner of registration. A State is deemed to have barriers to registration if the percentage of minority registration falls appreciably below the percentage of nonminority registration. The Attorney General is charged with the responsibility of establishing exactly what that differential will be, after working with the Census Bureau to develop accurate measures of minority and nonminority registration.

The State plan required under the bill must include provisions to eliminate barriers to registration, ensure accurate and inclusive registration lists, and ensure that all eligible voters are permitted to exercise their right to vote. In evaluating any State plan, the Attorney General must determine whether the provisions of the plan are as likely to eliminate barriers to registration as establishment of procedures for mail-in registration, agency-based registration, motor-voter registration, and election day registration.

A number of States are already attempting to deal with this problem. Four States either allow registration on election day or, in the case of North Dakota, do not require registration at all. The success of those particular experiments, I think, is enormously important to recognize.

Twenty-four States currently allow mail-in registration. Often, however, this mechanism is ineffective because of the complexity of the registration form, and because the forms themselves are frequently in short supply.

About 20 States currently allow registration at designated agencies dealing with the public. About 15 of these have so-called motor-voter registration, in which applicants for driver's licenses are simultaneously registered to vote. While motor-voter registration provides an inexpensive means of reaching many voters, it is less effective in reaching those with the lowest incomes. In 1983, for example, only 47 percent of the 36 million adults in households with incomes under $10,000 had driver's licenses. Thus, in order to reach the poor, other public agencies such as unemployment, public assistance, and public health offices should also be required to register voters.

Finally, in examining how citizens place their names on the voter rolls, we must also look at how their names may be taken off. Voters who have died or left the jurisdiction should be removed from the voting list, but voting officials should not be allowed to purge persons for not voting. All voters should be given adequate notice before being removed from the rolls, and a meaningful opportunity to prove their residence and vote.

Also, any effort to remove unqualified persons from the voting lists should be done in a uniform, nondiscriminatory manner. In recent years we have seen attempts in jurisdictions across the country to selectively purge minority voters. Federal action is indeed needed to end this invidious practice.

Legislation to reform voter registration has been before the Congress for many years. Major efforts were made in the 1970's to enact postcard registration and election day registration, but no final action was achieved.

Now, however, the prospects for successful action are improved. The House Administration Committee has already reported a bipartisan bill, and the Senate Rules Committee has indicated that it may mark up a bill shortly.

All of the pending measures share the same fundamental objective. We on the Judiciary Committee stand ready to work closely with our colleagues to fashion a comprehensive bill that will end the scandal of the current system and make registration what it ought to be—a reasonable means for implementing the right to vote—instead of an obstacle course to the ballot box.

There are many distinguished witnesses here today, and I look forward to their testimony. I thank the Chair for indulging me with the time.

Senator SIMON. Thank you, Senator Kennedy.

Senator Hatch.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Thank you, Senator Simon, Mr. Chairman.

The ability to vote is, of course, one of the most vital parts of our constitutional system. The ability to register and vote should be and I think must be free of discrimination.

In the series of hearings we begin today on S. 675, the subcommittee, in my view, will need to examine a wide variety of important issues raised by the bill. These issues include federalism; the use of discriminatory impact standards to invalidate, as a practical matter, neutral State voter registration requirements; the potential for fraud in the use of certain voter registration techniques which this bill clearly aims for; costs and who bears them; and the very need for any additional legislation to address any actual discrimination that might exist. Indeed, existing constitutional and statutory provisions such as the Voting Rights Act seem to cover concerns that this bill is trying to address.

The bill represents, in my opinion, a draconian shift of power from States and localities to the Federal Government in the areas of voter registration, election day challenges, and purges of voter rolls. Under S. 675, the Attorney General becomes a voter registration czar over the States, and this czar would have far, far more power than we have given to our drug czar in last year's drug legislation.

This massive intrusion on traditional State and local prerogatives in voter registration, election day challenges, and the maintenance of voter enrollment rolls, is not premised on intentional race, national origin, gender, or other discrimination. Instead, it is based on the allegedly "discriminatory impact" that State and local voter registration practices have "on the basis of race, color, national origin, sex, age, disability, or other factors." Thus, perfectly neutral voter registration requirements will be subject to the Attor-

ney General's review and, for all practical purposes, significant alteration or removal—perfectly neutral approaches.

The bill says:

> A State shall be deemed to have barriers to registration if the percent of minority registration to nonminority registration is less than the percentum established by the Attorney General by regulation.

A mere disparity in these figures, however, is not proof of discrimination, and there are many reasons, unrelated to race or the other factors listed for group differences in voter registration percentages.

For example, socioeconomic factors play a role. Indeed, let me quote from a January 1988 report entitled "The Impact of the Black Electorate" by Thomas E. Cavanagh for the Joint Center for Political Studies. The Joint Center conducts research on public policy issues of special concern to black Americans and seeks to promote black political involvement. The opinions are his, not necessarily those of the Joint Center.

He goes on to say—this is Thomas E. Cavanagh, in his study:

> The prerequisite to electoral participation and influence is registration. Virtually without exception, the black voting age population is concentrated in demographic categories noted for low registration. The black population is younger, less educated, more blue collar, more impoverished, less likely to be married, more likely to be composed of renters, and more southern than the white population—all factors associated with low voter participation.
>
> When all of these factors are statistically controlled, black turnout is about equal to white turnout. In other words, the lower registration and turnout of blacks can be entirely accounted for by their relatively marginal position in a white-dominated society.

Now, I believe that we should do something for disadvantaged persons in this country but, in light of this report, it seems to me this bill will not address actual voter registration access at all.

This bill is ironic, too, in light of the actual numbers. According to the Census Bureau, in 1986, 65.3 percent of whites reported they were registered. To listen to the proponents of this bill upon its introduction, one would think the percentage of black registration would be way down. In fact, 64 percent of blacks reported that they were registered, according to the Census Bureau regarding 1986. That is a 1.3 percent difference.

In 1988, 67.9 percent of whites and 64.5 percent of blacks reported that they were registered. That is a 3.4 percent gap. For Hispanics, after factoring out the sizeable noncitizen population, the reported registration was about 57 percent. Indeed, in the last 20 years, in Presidential election years, the gap in reported black-white voter registration has narrowed from 9.2 to 3.4 percent. In congressional election years since 1966, that gap has dwindled from 11.4 to 1.3 percent.

Where is the problem that requires Federal intervention here, especially this drastic intervention required by this bill, S. 675?

One more statistic also helps demonstrate that disparities in percentage of registration do not necessarily reflect discriminatory barriers in voter registration requirements. In one jurisdiction in 1988, the Census Bureau said 70 percent of whites and 62.3 percent of blacks reported that they were registered. Perhaps to the proponents of this bill that reflects discrimination. The jurisdiction, however, in this case happens to be the District of Columbia, in which

there has been significant black participation in elections and political office.

Should the District of Columbia be put under the Federal Government's thumb with respect to its voter registration practices because of this mere statistic? I think not. Perhaps we will need a home rule movement for the States if this bill becomes law.

At this point I would ask that my entire opening statement be included in the record, but let me just say——

Senator SIMON. It will be included in the record.

Senator HATCH. Thank you, Mr. Chairman. Let me just say one other thing: This bill does not require, does not outright require registration by mail, registration at any Federal, State, county, or municipal agency that serves the public, and at private agencies volunteering to register voters, registration at State motor vehicle agencies, or same day as election registration. However, the bill says when a State is required to submit a plan to the Attorney General, the Attorney General, in accepting the plan, "shall consider the extent to which the State plan provides for the establishment" of these very procedures. That is section 5(d).

Now we all understand what is going on here. These are the procedures the bill aims to impose upon the States. A number of States do have and do provide for mail-in registration, motor vehicle registration, and very few have same day as election registration, according to some of the people who are for this bill.

However, only three or four States allow same day as election registration, and whether that works in those States or not, you can't assume from watching those few States that such a process can work in California, New York, Florida, or other States. Plus, the mail-in procedures of the States that do allow for it, as I understand it, differ in their requirements.

The conditions in different States, their political history and culture, can all differ. One technique may be workable in one State but not another, or a variation of that particular technique may be workable in a different State. I don't think the States need the Attorney General to tell them how to handle these matters.

There are many other things I would like to say about it, but like I say, I will submit the rest of my statement for the record.

Senator SIMON. It will be entered in the record.

[The prepared statement of Senator Hatch follows:]

STATEMENT OF SEN. ORRIN HATCH
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION
THE VOTING RIGHTS ACT, S. 675

Thank you, Mr. Chairman. The ability to vote is, of course, one of the most vital parts of our constitutional system. The ability to register and vote should be free of invidious discrimination.

In the series of hearings we begin today on S. 675, the subcommittee, in my view, will need to examine a variety of important issues raised by the bill. These issues include federalism; the use of a discriminatory impact standard to invalidate, as a practical matter, neutral state voter registration requirements; the potential for fraud in the use of certain voter registration techniques which this bill clearly aims for; costs and who bears them; and the very need for any additional legislation to address any actual discrimination that might exist.

The bill represents a draconian shift of power from states and localities to the federal government in the areas of voter registration, election day challenges, and purges of voter rolls. Under S. 675, the Attorney General becomes a voter registration czar over the states — and this czar would have far, far more power than we have given to the drug czar in last year's drug legislation.

Traditionally, the states and localities have had responsibility for voter registration practices. The Constitution reserves the lion's share of authority over the electoral process to the states. Article I, section 2, for example, in addressing the qualifications of electors of the House of Representatives, says, "Electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature." S. 675, of course, intrudes not only on registration for federal elections but for state and local elections as well. While the 15th amendment gives Congress some authority over state voting laws in the race area, I also note that this bill addresses alleged barriers to registration on the basis of age, sex, disability, "or other factors" -- whatever that means.

This massive intrusion on traditional state and local prerogatives in voter registration, election day challenges, and maintenance of voter enrollment rolls, is not premised on intentional race, national origin, gender or other discrimination. Instead it is based on the allegedly "discriminatory impact" that state and local voter registration practices have "on the basis of race, color, national origin, sex, age, disability or other factors." Thus, perfectly neutral voter registration requirements will be subject to the Attorney General's review and, for all practical purposes, significant alteration or removal.

The bill says, "a State shall be deemed to have barriers to registration if the per centum of minority registration to nonminority registration is less that the per centum established by the Attorney General by regulation." A mere disparity in these figures, however, is not proof of discrimination. And there are many reasons, unrelated to race or the other factors listed, for group differences in voter registration percentages. For example, socio-economic factors play a role. Indeed, let me quote from a January, 1984 report entitled "The Impact of the Black Electorate" by Thomas E. Cavanagh for the Joint Center for Political Studies. The Joint Center "conducts research on public policy issues of special concern to black Americans" and seeks to promote black political involvement. The opinions are his, not necessarily those of the Joint Center.

> The prerequisite to electoral participation and influence is registration. Virtually without exception, the black voting-age population is concentrated in demographic categories noted for low registration. The black population is younger, less educated, more blue collar, more impoverished, less likely to be married, more likely to be composed of renters, and more southern than the white population — all factors associated with low voter participation.
>
> When all of these factors are statistically controlled, black turnout is about equal to white turnout. In other words, the lower registration and turnout of blacks can be entirely accounted for by their relatively marginal position in a white-dominated society.
> (footnote omitted) (emphasis supplied)

I believe we should do something for disadvantaged persons in this country. But, in light of this report, it seems to me this bill won't address actual voter registration access at all.

This bill is ironic, too, in light of the actual numbers. According to the Census Bureau, in 1986, 65.3 percent of whites reported they were registered. To listen to the proponents of this bill upon its introduction, one would think the percentage of black registration would be way down. In fact, 64 percent of blacks reported they were registered, a 1.3 percent difference. In 1986, 67.9 percent of whites and 64.5 percent of blacks reported they were registered, a 3.4 percent gap. For Hispanics, after factoring out the sizable noncitizen population, the reported registration was about 57 percent. Indeed, in the last 20 years, in Presidential election years, the gap in black-white voter registration has narrowed from 9.2 percent to 3.4 percent. In Congressional election years, that gap has dwindled from 11.4 percent in 1966 to 1.3 percent in 1986. Where is the problem requiring federal intervention, especially the draconian intervention of S. 675?

One more statistic also helps demonstrate that disparities in percentage of registration do not necessarily reflect discriminatory barriers in voter registration requirements. In one jurisdiction, in 1988, the Census Bureau said 70 percent of whites and 62.3 percent of blacks reported they were registered. Perhaps to the proponents of this bill that reflects discrimination. The jurisdiction happens to be the District of Columbia, in which there has been significant black participation in elections and political offices. Should the District be put under the federal government's thumb with respect to its voter registration practices because of this statistic? I think not. Perhaps we will need a home rule movement for the states if this bill becomes law.

Once a state is compelled to produce a plan, the Attorney General, in approving the plan, must "consider the extent to which the state plan provides for the establishment of the following procedures — (1) registration by mail, (2) registration at any Federal, State, county or municipal agency that serves the public directly and at any private agency that voluntarily agrees to register voters, (3) simultaneous voter registration with applications submitted to the State motor vehicle agency, or (4) permits any individual who is eligible to register to vote and vote on the date of the election involved."

Here we get to the real crux of the matter. The proponents of national requirements for mail registration, same day registration, the use of numerous public and private entities for voter registration, and department of motor vehicle registration, have been unable thus far to achieve their objectives as a matter of so-called "electoral" reform. They now seek to do so by trying to put the label of "civil rights" on these registration techniques as mask for imposing them on states and localities which don't use them. These registration techniques raise serious concerns about potential fraud. And, I have not even addressed the bill's restrictions on election day challenges of voters and purges of voter rolls.

The cost of imposing these requirements must also be addressed.

Finally, the subcommittee needs to address the issue whether actual discrimination that may exist is not already covered by current constitutional and statutory guarantees.

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Senator SIMON. Senator Metzenbaum.

OPENING STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S. SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM. Mr. Chairman, I want to commend you for going forward with this hearing. I am pleased to be a cosponsor of this legislation with you. I think it is critically important that we pass the bill and we pass it promptly, because the right to vote is certainly one of the most precious rights we as Americans enjoy. Voting is at the very heart of our representative democracy, and the right has evolved and expanded throughout our Nation's history.

So it is consistent with the historical expansion of our right to vote that we continue to remove barriers to the ballot box. That is the reason I am proud to be a cosponsor, with Senator Cranston, you, Senator Kennedy, Senator Specter, and others, of this bill. The Equal Access to Voting Act of 1989 is critically important legislation. It will be a major step toward eliminating regulations on voter registration that have had a discriminatory impact and have in practice discouraged participation in our political process.

I see no reason why we should not make voter registration as simple as possible. The procedures promoted in this legislation—mail-in registration, agency-based registration, simultaneous registration with motor vehicle applications, and election day registration—would go a long way toward increasing voter turnout on election day.

This bill also puts restrictions on the purging of voter rolls and on voter challenges, and provides criminal penalties for voter intimidation. I feel that is particularly important because we have seen, in recent political campaigns in some States, efforts to challenges, purge, and intimidate minority voters.

We saw this in the 1960's in Arizona, where minority voters were challenged and harassed at polling places in Phoenix. Some of these incidents were discussed before the Judiciary Committee in 1986, during the nomination hearings of Chief Justice Rehnquist.

That same year, while considering the nomination of Judge Sidney Fitzwater to the U.S. District Court for the Northern District of Texas, we heard testimony describing a ballot security program in Dallas where signs were posted in predominantly black polling places warning that a person could be imprisoned for trying to influence a voter how to vote or for voting without being registered.

Another example of voter intimidation took place in New Jersey during the 1981 Governor's race, where armed guards wearing security uniforms and arm bands were posted at polling places in minority precincts. The Democratic Party filed suit against the Republican Party, and the result was a consent decree whereby the Republicans agreed to refrain from such practices in the future.

But we saw this type of behavior again in 1986 during the Senate race in Louisiana. At that time a so-called ballot integrity program sponsored by the Republican National Committee challenged the registration of 31,000 voters in high-Democratic, high-minority pre-

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cincts. A State court ordered a halt to this program prior to the election.

When the Associate Attorney General for Civil Rights, Mr. Reynolds, appeared before this committee in 1987, I asked him why his office had decided not to bring charges in this matter. He replied that his staff concluded that no further investigation was needed. I am sad to report that we later learned that this was not the case at all. He had not given us the facts. Internal Justice Department memos indicated that his staff had in fact recommended an FBI investigation, but Mr. Reynolds refused to approve such an investigation.

Most recently, in last year's Senate race in Nevada, similar tactics were employed, as voters in the State's most Democratic county received cards in the mail warning them of penalties for voter fraud, and security guards with arm bands were posted at polling places.

All of these cases involve voter intimidation by the Republican Party, but in all fairness I must say that in the past there have also been legendary instances of irregularities in voting in Chicago and other big cities controlled by Democratic machines.

There is no place for voter fraud or intimidation in our democratic system. This bill, with its criminal penalties, would no doubt discourage this behavior. I would also hope that a message could go out from the very top of both major political parties, that voter intimidation will not be tolerated. I call upon both Ronald Brown, chairman of the Democratic National Committee, and Lee Atwater, chairman of the Republican National Committee, to send a letter out to their national committee members and their State party chairmen, stating that vote fraud and voter intimidation under the guise of ballot integrity programs will not be tolerated in their respective parties.

For our democracy to work, the ballot box must be open to all Americans. In last year's Presidential election, barely 50 percent of eligible voters bothered to go to the polls. If we believe that this low level of participation in our political process is not right, then we must act now. Before we can encourage people to vote, we must make it easier for them to vote. The barriers to voter registration must be removed and the intimidation of voters must be ended.

I am pleased to cosponsor this bill, and I urge my colleagues to support its passage. Thank you, Mr. Chairman.

Senator SIMON. Thank you, Senator Metzenbaum.

If I could just observe, when the members talk about "expanding" voting rights, I can remember spending 2 days in 1957, with Martin Luther King and Ralph Abernathy, going around helping people fill out long forms in order to vote, if they happened to be black Americans. When Abraham Lincoln was a young man in Illinois, everyone voted openly. When we first had a secret ballot, those who opposed it said it would ruin democracy in this country if we had a secret ballot. We today just assume that is part of our process. We have gradually expanded the franchise, and we are a healthier Nation when we have done it.

Our first witness is the chief sponsor for this legislation. Senator Cranston, we are very pleased to have you with us.

STATEMENT OF HON. ALAN CRANSTON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator CRANSTON. Thank you very much, Mr. Chairman. I am deeply grateful for this opportunity to testify on the need for voter registration reform legislation, for the fact that the committee is coming to grips with this important matter, and that there is a quite hospitable situation in the committee with you and others as cosponsors.

I offer a prepared statement for the record that goes into details about the legislation and the problems addressed. Other witnesses will also cover those details. Some of you have already addressed these isues. I am going to speak instead, in my brief remarks to you, to the basic problem of declining voting in America and the role of registration in that decline.

Let me give you the history, briefly, of voting participation in America. In the first election, when our democracy was born in 1788, only white males owning considerable property could vote. Only 3.5 percent of them voted in that first election. For the next century there was a steady rise in participation, reaching a high point in 1876—oddly enough, the exact anniversary of the Revolution—and then it turned down. With a blip upward now and then, it has been going down ever since.

The reason it turned down is very, very clear. The Civil War was over. Blacks had been given the right to vote by the 15th amendment. Immigrants were flooding the country from Central Europe and Ireland, and women were beginning to grumble about not being allowed to vote, and the white elite males who then had things pretty much their way took steps. They created literacy tests, poll taxes, and registration as barriers to participation, and these devices worked very effectively. Down went voter participation, and it has been going down ever since.

We got rid of the poll tax. We got rid of literacy tests in the civil rights days, in the 1960's, but registration remains. It is a barrier. It still keeps people from the polls. We are now down in participation to truly alarming levels. Eighty million people who could have voted in 1984 for President did not vote. One hundred and ten million who could have voted in the midterm elections of 1986 did not vote. Ninety million did not vote for President last November. That is a 10 million increase in nonvoters over the previous Presidential election.

Since 1976, our Presidents have been elected by less than 27 percent of the votes of the people who could be voting in our elections. This circumstance raises real questions about the legitimacy of decisionmaking in our democracy. It reflects and it also helps produce a sense of alienation. It lessens accountability. It opens the door to special interests having an undue voice in what happens in our country.

There are many, many reasons for nonvoting, but the principal reason is the difficulty in registering. Eighty percent of the people who are registered vote in Presidential elections, compared to the 50 percent of the overall potential electorate that fails to vote. A New York Times poll recently indicated very clearly that the principal reason for nonvoting is registration. All statistics and all ex-

perience shows this: that the simpler registration is made, the more people register and the more people vote.

It is an inadvertent barrier in some States, like in my State. The cutoff is 30 days before the election. If you aren't registered then, you can't vote. A lot of people don't start thinking about who they are going to vote for until the climax of the election, and then they discover they forgot to register. They didn't register; they can't register; they can't vote.

It is a deliberate barrier in many communities in our country. There are rural counties in Mississippi where you have to register twice before you can vote. Poor people and black people are purged without reason in some communities in Louisiana and in other States. In some communities, the only place you can register is at the local jail, and some people don't choose to go to the local jail to register. In some places you still have to travel 60 miles to register, and that is a difficulty for some people.

Senator Metzenbaum spoke about intimidation at the polling place. There is also intimidation at the registration place—North, South, East, West, States all around the country, that now and then occurs.

Since politics is inevitably a factor in everything we do here, I am going to be so bold as to discuss the political aspects of making a change in the registration practices of our country, and let me say I don't think it is bad that politics is involved. That's the way our system works. It is the lifeblood of our system, and I look upon politics as potentially one of the noblest of professions—not always that in fact, but potentially that.

What would be the political consequences of change in our registration practices? Let me say first there are some misconceptions about who the people are who do not vote. Nonvoting is an epidemic now, cutting across all socioeconomic, educational, and ethnic lines. Fifty percent of nonvoters live in families with incomes of $20,000 a year or more, and are people who have graduated from high school and attended college. Voter participation—some will be surprised by this—has been rising among young blacks and young Hispanics. It has been falling among young whites.

Alarmingly, I think, nonvoting is worse among the youngest Americans. Eighty-four percent of young Americans aged 18 to 24 didn't vote in 1986 in the national elections. Polls taken after the 1988 elections—and this will startle some people—like polls after previous elections, indicated that if everybody had voted, the election would have come out the same way.

Now Democrats tend to believe that we will do better if more poor people and more minorities vote, and yet Lee Atwater, the new chairman of the Republican National Committee, has stated that their party is going to make a concerted effort to do better among blacks, claiming to be able to do better among blacks, if that is the case, if more are voting.

Republicans tend to believe that present trends clearly indicate that they would do better if more young people were voting. I think that has been offered as one of the reasons for Newt Gingrich, my opposite number as Republican Whip in the House, getting behind the registration effort now underway in the House, as we have this effort underway in the Senate.

The fact is, I want to stress, that nobody knows what the consequences will be if we change and get rid of the barriers to registration. The outcome will really depend upon the issues and the way they are handled, on the campaigns and on the candidates, so really this is not a partisan matter. That is one reason support for the legislation in the House and in the Senate is bipartisan, and I am delighted that Senator Specter, a key member of this committee, is a cosponsor.

A more important reason for this bipartisan cosponsorship, I am convinced, is that greater voter participation will be good for our country, and I do mean honest participation. We want no Panama-style handling of elections in our country. That is why the legislation puts teeth in protections against voter fraud.

The basic question is often asked, Do we really want more people to vote? Will we get better government or more qualified leaders if more people vote? That is a legitimate question.

I think a very thoughtful answer to that question has been given by an American observer, Robert Cutner, who said, "A narrow base of political participation corrodes democracy. The idea that everybody, credentialed or not, gets to participate, is the most wonderful and audacious thing about democracy."

Let me close by saying that I believe that the right to vote is the most fundamental and most important right of citizens of a democracy. Millions of people have fought, bled, and died for the right to vote, and some have won it with their blood. We all know that there are millions still denied the right to vote, the right to select their own leaders, in many, many countries around this world of ours. I say that we must remove the barriers that deny the right to vote in our country.

Thank you very much.

Senator SIMON. Thank you very much, Senator Cranston.

I will suggest that we use the 10-minute rule here in the committee, unless there is objection. I have no questions.

Senator Specter.

Senator SPECTER. Senator Cranston's statement has been so comprehensive that I have none, either. [Laughter.]

Senator SIMON. Senator Metzenbaum.

Senator METZENBAUM. Senator Cranston's statement has been so overwhelming that I have none. [Laughter.]

Senator SIMON. Senator Hatch, I am sure you feel the same. [Laughter.]

Senator HATCH. I have a number of questions. I will submit them in writing.

Senator SIMON. Senator Kennedy.

Senator KENNEDY. It has been very provocative and inspiring, but I do have just two short questions.

Senator HATCH. Maybe I will ask some of mine, too. [Laughter.]

Senator KENNEDY. Do you think, Senator, that any legislation that we adopt ought to have not only applications at the Federal level but also at the State and local?

Senator CRANSTON. Yes.

Senator KENNEDY. For the reasons that you have outlined here?

Senator CRANSTON. Yes.

Senator KENNEDY. Because, as you are very much aware, that is an alternative approach that has been taken by some here in the Senate.

Second, there will be a good deal of argument made that what is really necessary to deal with the kind of situation that Senator Metzenbaum has mentioned and that you pointed out, is just stronger law enforcement, and all we really need to do today is to clean up where there is harassment of voters or where there is fraud. There are those who feel that that type of activity would adequately address the issue. What is your quick reaction to that?

Senator CRANSTON. Well, we need that effort but that is not enough. It simply is too difficult for many people to register. I think we should make it as simple as possible, consistent with preventing fraud.

That is why I think motor-voter is one of the best approaches. When you get your driver's license or when you just renew your license plate, have a simple opportunity then to register. Ninety percent of the people who are eligible to vote own cars or have driver's licenses, and that would reach many of them—most of them—in a very simple way.

Then we have to think about the others, and you simplify life for them by making it possible to register when you go to governmental agencies, for example.

Senator KENNEDY. You point out in your own testimony that a number of States now have election day registration. Others have adopted the motor registration, other ways. North Dakota is a State that has no registration, in essence, election day registration.

In your very extensive and really exhaustive review of the subject, you must have looked into the issue of fraud, whether the furtherance of your objectives has really resulted in increased incidence of fraud. This is what we are going to hear. We have already heard it mentioned in the course of even this hearing.

What does your own review and your own study show of those States—a few—that have taken very extensive steps to broaden the opportunity to vote?

Senator CRANSTON. Well, of the four States that either have election day voter registration or no registration—that is North Dakota—those four are among the top five States in turnout. They are not among the top five States in voter fraud. There is no sign in those States that advantage has been taken of election day registration or no registration for fraud. There is no sign that the other procedures that are used now in other States to reverse voter registration have led to any increase in fraud. The bill does provide provisions that would, I think, greatly reduce the chance of fraud.

Senator KENNEDY. Thank you very much, Senator.

Senator SIMON. Thank you very much, Senator Cranston.

Senator CRANSTON. Thank you a great, great deal.

[The prepared statement of Senator Cranston follows:]

Testimony of Senator Alan Cranston
Before
Subcommittee on Constitution
Committee on the Judiciary
May 10, 1989

S. 675
Equal Access to Voting Act of 1989

Mr. Chairman, distinguished members of the Committee, I am pleased to be here today to offer testimony on the need for legislation to break down the barriers to voter registration which prevent millions of Americans from exercising their most fundamental precious right -- the right to vote.

I very much appreciate the support and cosponsorship of the members of this subcommittee, including the distinguished chairman, the Senator from Illinois, Mr. Simon, and the ranking minority member, the Senator from Pennsylvania, Mr. Spector, as well as the Senator from Massachusetts, Mr. Kennedy, and the Senator from Ohio, Mr. Metzenbaum, for the legislation I introduced earlier this year, S. 675, the proposed "Equal Access to Voting Act of 1989." This is truly a bipartisan effort to eliminate discriminatory barriers to voter participation.

This morning's hearing is focused upon identifying the problems that exist throughout the nation in the voter registration area and the need for legislative action to help ensure that all Americans have full access to the ballot box. Individuals representing organizations which have been confronting on a daily basis the barriers to voter registration will share with you their perspective on the problem and the need to find effective solutions.

The message, I believe, is clear: Congress must act to help bring about voter registration reforms so that all Americans -- regardless of race, national origin, gender, disability or age -- will be able to participate fully in our democratic process.

It has been well documented in previous Congressional hearings and investigations that the impact of restrictive voter registration requirements fall most heavily on minority, low-income, young or disabled citizens. However, the right to vote belongs to all Americans and reforms designed to eliminate barriers to voter registration will benefit all Americans. There are a number of different approaches to these problems and, as you know, in the last Congress I introduced somewhat broader legislation which would have mandated uniform voter registration procedures in every state. Action on a bipartisan bill appears likely in the near future in the House of Representatives.

The bill before this Committee, S. 675, was drafted more narrowly to focus on barriers to registration which have a discriminatory impact or deny citizens their fundamental right to vote in those states where more acute problems appear to exist, rather than covering every state. It was also drafted to allow states greater flexibility in designing remedies. I look forward to working with the members of this Committee and the Senate Rules Committee in perfecting legislation so that we can move forward with a strong, fair, equitable, and bipartisan bill that will help enable all Americans to exercise their fundamental right to vote.

Voter Registration: Barriers to Voting

The right to vote is the most fundamental and important right of citizens of a democracy. It is through the electoral process

in a democracy that the people express their will. Democratic institutions cannot function effectively unless citizens participate in the electoral process. Tragically, the United States is increasingly becoming a nonparticipatory democracy. Fewer and fewer of our citizens reach the voting booth on election day. If this decline is not halted, the legitimacy of the decisions reached by our government will come into question, and those who don't like the decisions could be tempted to turn to non-democratic means to change them. Our most recent presidential election produced the lowest voter turnout in 64 years. Barely 50 percent of the eligible voting age population voted in last November's election. The 1986 congressional election had an even more dismal turn-out. Barely one-third of the eligible voters voted in that election.

The reasons why many Americans fail to exercise their right to vote are diverse and complex. But one factor stands out -- restrictions on voter registration prevent many Americans from voting. A poll done by the New York Times and CBS News last year revealed that the major reason given by individuals who did not vote was registration. Nearly 40 percent of those surveyed who failed to vote could not because they were not registered. Two-thirds of those said that they would have voted but for the fact that they were not registered.

In many states, the burden is on the potential voter to figure out the complex path to registration.

In many states, limitations and restrictions on the registration process are obstacles a voter must overcome to get to the ballot box.

In many states, the impact of these restrictions and limitations falls most heavily upon minority, low-income, or disabled citizens.

In this country voting is a fundamental right of our citizens, not a privilege to be granted begrudgingly to a select few. We must make sure that restrictions on the voter registration process do not disenfranchise otherwise eligible voters.

We need to bring about reforms in voter registration laws -- reforms that will eliminate the barriers that keep our citizens from registering to vote and reforms that will eliminate the discriminatory effects of our current registration procedures.

Registration Requirements -- Rooted in Discrimination

To understand fully the adverse impact that restrictive registration requirements have on the exercise of the right to vote, it is important to recognize why many of these restrictions were first established.

Registration requirements, like the poll tax and literacy tests, were primarily developed and refined after the Civil War, when the Fifteenth Amendment extended the franchise to blacks. Like the poll tax and literacy tests, registration requirements were often designed to be deliberate barriers to prevent black citizens from voting. Lengthy residency and registration requirements were also developed in the later part of the 19th century to prevent immigrants and other "undesirables" from voting. And they worked. Turn-out in presidential elections declined dramatically from a high of almost 88 percent in 1880 to 67 percent in 1928.

Poll taxes and literacy tests were abolished during the civil rights struggles of the 1960s. But registration restrictions

remained and continue to keep citizens from the polling place, sometimes inadvertently, but often deliberately.

The discriminatory impact of many restrictions on voter registration requirements has been well documented over the years. In 1959, the United States Commission on Civil Rights reported on how registration practices operated to deny citizens the right to vote. Those findings were instrumental in bringing about passage of the Voting Rights Act of 1965.

Unfortunately, although we have made great strides as a nation in eliminating discrimination at the ballot box, minority voters continue to be disenfranchised by registration barriers. In 1981, the U.S. Commission on Civil Rights found that registration rates for minorities continued to lag well behind the rates for whites in states covered by the Voting Rights Act. The 1981 Commission found this disparity resulted from such factors as openly hostile local registrars, refusals to allow representatives of minority organizations to act as deputy registrars or to establish satellite sites in minority communities, and selective purges or re-registration requirements.

In 1984, the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, chaired by my good friend and colleague from California, Representative Don Edwards, held hearings on registration barriers to the exercise of the right to vote. The Subcommittee, in a report entitled, "After the Voting Rights Act: Registration Barriers," found that there remained a notable discrepancy between white and minority registration in a number of states covered by the 1965 Act. The report noted that barriers to registration -- nationwide, not just in the South -- effectively prevented many minority citizens from registering. The report listed the types of barriers described during the hearings.

A number of states were reported to have limited registration to a single central location in a county, usually the county courthouse. This created a series of problems. Often these sites are open only on weekdays and during normal business hours. Many closed during lunch hours, making it very difficult for working people to get registered.

In one instance described, the registrar's office was located in the basement of the county jail.

The location of the county courthouse itself often caused problems since they are rarely located in minority communities. Particularly in rural communities, getting into town without public transportation can be exceedingly difficult. The Subcommittee cited one example where the courthouse was a 60-mile trip for many black residents.

Another problem encountered was intimidation. Witnesses testified that in one county the white sheriff "makes a point of stationing himself outside the door of the voter registration office in the courthouse when blacks come to register."

The House Subcommittee report also highlighted the problems associated with the use of deputy registrars. Over half the states allow local registrars to deputize volunteers to participate in registration efforts, but the local registrars often exercise broad discretion over who to deputize and where and when deputies may register voters. The Subcommittee's record indicated numerous instances of discrimination in the exercise of that discretion -- for example, registrars refusing to deputize volunteers from low-income neighborhoods. Other types of restrictions on the time, place and manner in which deputy

registrars are allowed to function severely limited their ability to help citizens register. For example, restrictive rules in some communities prohibit door-to-door registration or limit registration to permanent satellite registration sites.

In other instances, the Subcommittee report noted resistance in a number of states to allowing volunteer registrars to register citizens at social services agencies. Such prohibitions have been successfully challenged in court litigation, but the practice is still widespread.

The 1984 report cites other barriers such as limited access to mail-in registration forms and overly-complex forms. One state required mail-in forms to be notarized, thus requiring a potential voter to find and pay for a notary service. In effect, this served as a kind of poll tax. Lengthy deadlines for registration prior to election day also contribute to the problem. Potential voters' attention frequently only turns to an the election shortly before its date, too often too late to get registered. Some states require dual registration -- separate registration for both city and county elections.

Finally, purging policies in many states operate to disenfranchise potential voters. The Subcommittee noted that purge laws, while not on their face objectionable, can operate unfairly, citing states where purging was done selectively, resulting in purging primarily predominately black communities.

Discriminatory Impact Continues

There is overwhelming evidence that voter registration restrictions continue to have a discriminatory impact. In the testimony presented to Congress last year on the voter registration legislation which Representative John Conyers and I introduced in the 100th Congress, the continuing incidence of discriminatory barriers to registration was repeatedly documented.

Arthur Flemming, chairman of the Citizen's Commission on Civil Rights and former Chairman of the United States Commission on Civil Rights described in his testimony before both the House and Senate Committees the results of 6 days of field hearings which the Citizens' Commission on Civil Rights held on barriers to voter registration in connection with its 1988 report, "Barriers to Registration and Voting: An Agenda for Reform." The Commission, based upon its investigation, concluded that "substantial barriers to registration and voting continued to exist in many areas of the country and that now, as in the 1960's, discriminatory practices continue to inhibit the participation of citizens in the electoral process on account of race, age, income level, and physical disability."

The Commission observed in its 1988 report that although the restrictive practices of state and local officials affect the voting rights of all citizens, they have a disproportionately adverse effect on minority, low-income, and disabled citizens. It found that while the enactment and enforcement of the Voting Rights Act of 1965 eliminated many blatantly discriminatory practices, remnants of the old systems of disenfranchisement persist.

For example, the Commission found that where state laws permitted the use of satellite registration locations, local officials sometimes refused to designate sites in black communities. There was testimony regarding the refusal of such officials to allow members of black community groups to serve as deputy registrars. Registrars were also reported to require excessive identification for black applicants or subjected

Hispanic or Asian voters to undue scrutiny. In one state, white churches were allowed to register voters on Sundays while registrars in communities with large black populations forbid any registration activities on Sundays.

Other witnesses presented similar findings of discrimination. Laughlin McDonald, Director of the Southern Regional Office of the American Civil Liberties Union Foundation, testified about recent litigation involving minority citizens who had been denied the right to register and vote. He described a case brought in a county where 60% of the age eligible white residents were registered but only 48% of the black residents. The pastor of a black church submitted a request to the county board of registrars that his church be allowed to conduct voter registration, something explicitly authorized under state law. The local registrar refused. Subsequent litigation, in which the state attorney general sided with the black petitioners, was thrown out of court on the grounds the designation of registration sites was a matter of discretion for the local authorities. The state supreme court affirmed the dismissal on the grounds that the plaintiffs had not established that they had an "actual controversy." Local registrars were determined to have "absolute and unreviewable discretion in designating additional sites for voter registration and local citizens had no enforceable legal rights" to challenge discriminatory decisions.

In another case described, an advocacy organization for low-income and minority citizens was forced to bring suit against a state which announced a new policy prohibiting voter registration at any food stamp distribution center. Subsequently, the state reassessed the new policy and agreed to rescind it. Similar policies, unfortunately, persist in other states.

Another disturbing example presented in last year's hearings involved barriers to registration for Native Americans. Incidents of blatant discrimination against Native Americans seeking to vote or register were documented in a federal district court case where it was found that Native Americans had been denied access to voter registration cards, subjected to discrimination, and had their names removed from voter registration lists without justification.

Other examples cited in the testimony included registrars permitting satellite registration in white, but not black communities, cancellation of neighborhood registration drives after the NAACP and the League of Women Voters requested permission to conduct registration campaigns, and purging of the names of large numbers of voters from registration lists for failure to comply with stringent registration requirements.

The discriminatory impact of restrictive voter registration procedures does not fall only upon minority individuals. There is also ample evidence indicating that young voters and disabled citizens are also unduly impacted by limited access to registration. Philip Calkin, National Coordinator of Disabled but Able to Vote, reiterated in his congressional testimony last year that procedures that inhibit voter registration generally inhibit the registration of persons with disabilities even more. Similarly, young, first-time voters are more likely to be deterred from the election process when they have difficulties finding out how to get registered. However, once young people succeed in getting registered, they do vote in proportions similar to the general population.

Indeed, that is true of all segments of the voting age population. Once individuals are registered, the percentage of

those who actually vote is high. The problem is getting people registered.

Procedures to Eliminate Barriers and Increase Registration

Mr. President, in the last Congress, I introduced legislation in the Senate, S. 2061, which would have established uniform national standards for federal elections. All states would be required to provide for registration by mail, at agencies which serve the public, and on election day. Identical legislation was introduced in the House of Representatives by Representative John Conyers, who has long been a leader in the effort to bring about reform in the voter registration area. That measure was reintroduced in the House as H.R. 17 earlier this year. Bipartisan legislation, H.R. 2190, along these lines, is moving forward in the House of Representatives.

The legislation we introduced in the Senate this session, S. 675, the "Equal Access to Voting Act," takes a somewhat different approach, although the purpose and the goal of eliminating barriers to registration remain the same. The new legislation focuses more upon achieving the desired result -- increase in voter registration and elimination of disparities in registration between minority and nonminority votes -- than on selecting specified procedures to achieve those results and is designed to require reforms be adopted only in states identified to have problems in the voter registration area.

There is clear evidence that certain procedures can be effective in increasing voter registration rates among all citizens.

Election day registration is by far the most effective. Three states -- Minnesota, Wisconsin and Maine -- currently have election day registration and a fourth, North Dakota, has no registration. Voter turn-out in these states is among the highest in the United States. When election day registration was introduced in Minnesota, the state went from being 12th in the nation to 1st in the percentage of citizens who turned out to vote. When election day registration was introduced in Wisconsin, Wisconsin went from 33rd in the country to 4th in turn-out. Similarly, Maine's ranking went from 21st to 8th in turn-out. These four states rated in the top five for voter turn-out in the 1988 election. Minnesota had the highest turn-out in the nation (66.3 percent) with Maine (62.2 percent) Wisconsin (62.0 percent) and North Dakota (61.5 percent) following in 3rd, 4th, and 5th place respectively.

Mail registration can also increase voter registration. Twenty-seven states currently provide mail-in registration. With mail registration, a form can be filled out at a citizen's convenience. With mail registration, inconvenient registration sites and hours cease to hinder registration.

Agency-based registration can also result in increased registration. Nineteen states currently permit some type of registration activity in public agencies. Private agencies can also make an important contribution. In 1984, 1500 private agencies offered voter registration services, registering thousands of individuals.

Motor voter registration programs are another particularly effective technique. A number of states provide voter registration programs at motor vehicle agencies. Representative Al Swift, Chairman of the Subcommittee on Elections of the House Committee on House Administration, has proposed very innovative legislation, H.R. 15, which would, among other things, require simultaneous drivers licenses and voter registration

applications. As I mentioned earlier, the House is presently moving forward with a measure, H.R. 2190, that includes this concept, along with mail-in and agency-based registration.

There are a number of states which are able to maintain high percentages of their voting age population on the voter registration rolls. Generally, states which have adopted the procedures described above, or done things like shorten the registration time period, have been able to maintain significantly high percentages of registered voters.

For example, we know that each of the states with the highest rates of voter registration and voter turn-out utilizes one or more of the preceding techniques or something similar.

Colorado, with 1988 registration of 82 percent, provides for simultaneous voter registration with motor vehicle licensing.

Idaho, also with an 82 percent registration rate, has shortened its registration deadline to 10 days before an election.

Iowa, with an 80 percent registration rate, uses mail-in, motor vehicle, and agency-based registration and has only a 10 day prior to election deadline.

Michigan, with an 88 percent registration rate, utilizes agency-based registration.

Montana, which ranks 2nd in the nation in voter turn-out and among the top ten in registration, uses both mail-in and agency registration.

The list goes on. States with high registration rates have done something to achieve these rates. And although election-day registration is clearly the most effective way to remove registration barriers to voting, states can achieve high rates of registration with a determined effort along a variety of lines.

At the same time, however, it is also clear that simply adopting a procedure -- such as mail-in registration -- is not likely to produce the desired result unless it is done effectively. If the mail-in forms are not widely distributed, if they are too complex and invite errors that will disqualify the potential voter, a mail-in registration program will not result in increased voter registration.

Conclusion

The existence of barriers to voter registration and the disparate impact upon particular classes of citizens -- minorities, low-income individuals, young voters and disabled Americans -- is well documented. The task is to arrive at a consensus on the most effective way to achieve the result of eliminating the barriers which prevent citizens from voting. I believe this is a task we can succeed at in this Congress, and I look forward to working with you to achieve that result.

Senator SIMON. We are pleased to have our colleague from Kentucky here, Senator Mitch McConnell.

Let me just mention to all witnesses, we will put your full statements in the record. Those who feel comfortable summarizing, that will be appreciated.

STATEMENT OF HON. MITCH McCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator MCCONNELL. Thank you very much, Mr. Chairman. I appreciate the opportunity to be here.

I used to, in the midseventies, teach a course in political parties and elections at the college level, and this question of voter fraud that Senator Kennedy and Senator Cranston were talking about has always been an interesting one. In fact, it has a lot to do with the mores of the particular area of the country, and it is no surprise that in the areas of the country where voter fraud is the most prevalent, you don't have same day registration. The States have certainly understood what the challenges were in conducting an honest election, and those places in the country—such as your State, Mr. Chairman, and mine—where there is a long, undistinguished history of election day shenanigans, we have not had those kinds of procedures.

I am pleased to be here today to add my one voice to this debate on this most important issue. The way we conduct campaigns, give support to candidates of our choice, register to vote, and cast our ballots all make up the essential machinery of our democracy. Any legislation affecting this essential machinery must be given the strictest level of scrutiny in order to protect every citizen's voting right and ensure the integrity of the process.

Together with Senator Biden, the chairman of this committee, and the distinguished chairman of this subcommittee, I have introduced legislation to give Federal prosecutors greater authority to investigate and punish election fraud at all levels. This bill, the Anti-Corruption Act of 1989, would go a long way toward promoting the voting rights of honest American citizens. Interestingly enough, it was reported unanimously by this committee last year. I urge that we take swift action to get this measure on the books during the 101st Congress.

On the other hand, the bill that is before this subcommittee today, S. 675, would actually deny the voting rights of honest American citizens by opening the democratic process up to vote buyers, tombstone voters, multiple voters, and hordes of illegal aliens who could be rounded up on election day and paid to vote in our Federal, State, and local elections.

A 1982 Federal election fraud investigation in Chicago found that illegal aliens quickly acquire voter registration cards in States where they are easy to get. The aliens then use the cards to fraudulently obtain welfare benefits, food stamps, and even U.S. passports. One noncitizen used his voter registration card to get clearance for a Department of Defense weapons contracting job. And of course these illegal aliens vote faithfully in our elections in order to keep their registrations current.

In 1986, only 1 week before the election, the U.S. Border Patrol apprehended about 20 illegal aliens who were working for a campaign in a State assembly race in Santa Ana, CA. The aliens were supplied to the local Democratic headquarters by the International Laborers Union.

Last year the Texas Secretary of State received a report that illegal aliens were being brought across our border by the truck full and paid in cash to vote in a local sheriff's race. The Secretary of State sent in the Texas Rangers, who confirmed the report. After an investigation, it was found that the reason why this wholesale violation of the election process and our voting rights could happen was that the local election official did not ask for registration cards at the polls.

I am certain that the chairman, who comes from a State like mine with a long history of election fraud, would conclude that the Texas election official's failure to check registration cards was a gross dereliction of duty. Yet the bill before this subcommittee, S. 675, would simply eliminate the duty of election officials to check registration cards or drivers' licenses or proof of citizenship to prevent ineligible or illegal persons from voting in an election.

Specifically, section 6 of the bill requires election officials who have reason to doubt the eligibility of a voter to allow that person to vote, even if the person lacks—I repeat, lacks—documentation of registration, identity, residence, or American citizenship. All the person has to do is to submit a "affidavit ballot," which any person has the right to do under S. 675.

Section 13(8) establishes a procedure for handling affidavit ballots. The voter simply has to swear that he is qualified to vote in that election and give a current address. Of course, if the voter is an illegal alien and being paid to vote, it would be in his best interest to lie. S. 675 provides that the anonymous ballot will be separated from the sworn statement and mixed with the ballots of honest U.S. citizens "once the voter qualifications have been determined as prescribed in subsection (d)." However, there is no subsection (d) in section 13 of the bill. This is a totally meaningless safeguard.

The previous observations are only one of the invitations to illegal alien voters and election fraud contained in S. 675. Section 5 of the bill would require States to allow "any private agency" to register voters. Under this language, States would have no control over these agencies and what procedures they used to register people. Therefore, State election officials potentially would have no way to know whether the registration forms they received from these agencies were legitimate or not.

Finally, S. 675's election day registration requirement is a handout to the cottage industry of election fraud. Those who wished to sell their votes could do so several times, at various polling places, multiplying the lucrativeness of this practice.

Of course, the bill includes tough talk about election fraud and fraudulent registration, but frankly that is all it is—talk. Once an election has been bought and illegal ballots cast, it is nearly impossible—repeat, impossible—to reverse the damage. Despite all the flagrant vote-buying exposed in Kentucky's newspapers—in my State—and the tough new laws against fraud passed by our general

assembly, only one person has been convicted and sentenced in recent history in Kentucky—a vote-seller who served 1 day in jail.

At a 1983 field hearing conducted by this subcommittee in Chicago, U.S. Attorney Daniel Webb testified, "If we do not have that registration requirement, we would not be able to deal with vote fraud at all." That hearing took place after the most extensive election fraud investigation in history, yielding over 25 indictments and several jail terms.

The fact is that voter registration is not just the front line of defense against election fraud, it is the only defense. S. 675 would turn State voter registration requirements into a Maginot Line—easy to evade or overrun. As a result, American citizens' voting rights would literally be canceled out by the fraudulent votes of multiple voters or illegal aliens.

Some have tried to assert that voter registration laws deny people their voting rights, yet there is only scant evidence of that proposition. On the other hand, if S. 675 were enacted into law, it is likely there would be a national voting rights crisis due to the spread of election fraud. This ought to cause extreme concern to every U.S. citizen.

There is no proof that registering voters or making it easy to register improves legitimate voter turnout. For example, the States of Texas and California have among the least restrictive registration laws in the country, yet both of them had relatively poor turnout in the 1988 national elections. Both Colorado and Wyoming, on the other hand, had stricter registration procedures but much higher turnout.

The State of Virginia mounted an aggressive 4-year campaign to register voters, increasing the numbers of registered voters by 200,000, yet voter turnout increased by only 50,000 over that 4-year period. Finally, Hawaii, judged by the Federal Election Commission to have the most accessible polling places in the Nation, was ranked 48th among 50 States in voter turnout in 1988.

In conclusion, Mr. Chairman, a lot of nonvoters will use the excuse that registration requirements prevent them from voting, but that is all it is, an excuse, and a pretty poor one at that. When I went to El Salvador this year as the chairman of a congressional delegation to observe the Salvadoran Presidential election, we saw citizens walk for miles along dusty roads to get to the polls, and brave gunfire and death threats to cast their ballots. They were not making any excuses.

There is also in this country the right not to vote. A lot of democracies, as we all know, require people to vote, and they actually levy penalties when you don't. Perhaps we should conclude that most nonvoters simply don't want to vote. That is their right. In this country nobody makes you vote, but if any citizen truly desires to vote in this country, there is no reason why the current registration laws—which are designed to protect voting rights—should prevent that person from voting.

If there is any evidence that registration and voting laws are being used in a discriminatory manner to deprive people of their right to vote, then this subcommittee should immediately call for a full investigation of those charges under the Voting Rights Act of 1965.

It would be exceedingly unwise, however, to approve S. 675 in response to such allegations. This bill would deny the voting rights of all American citizens by making it easier for illegal aliens and vote-buyers to corrupt our democratic process. Such a step would utterly debase the constitutional right to vote that we Americans came to this country for, pay taxes for, have gone to war for, and yes, register to vote for.

Thank you very much, Mr. Chairman, for the opportunity to appear here today. I commend you for holding these hearings. The Rules Committee, as you know—of which I am a member—is also having hearings on a variety of different proposals relating to the election process, and hopefully we will have more discussions.

Senator SIMON. Just two quick questions: Are you concerned about the low voter turnout in this country?

Senator MCCONNELL. Yes, I am. I don't like it at all. I think that it has a lot to do with voters' attitudes about the relevance of the election to their daily lives, not whether or not it is difficult to register. In fact, as you know, Mr. Chairman, in Federal elections all you have to do is have a modicum of interest sometime prior to 30 days before the election, and you can register. It is not a difficult process. I don't think that this kind of bill will increase the turnout at all.

Senator SIMON. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Senator McConnell, I share the concern which you have expressed on voter fraud, and made a comment about it in my brief opening statement. Same-day registration concerns me because of the possibility of people going from one polling place to another and making a representation that they have not voted, and registering and then voting.

But what do you think about some of the other aspects of making it easier to register—by mail, for example, with the same kind of proof of citizenship, proof of residence? Would you have an objection to that?

Senator MCCONNELL. I don't particularly object to it. There aren't any circumstances under which I would ever support same-day registration. I think that is just an open-ended invitation to cheating. Some kind of direct mail process with proper verification I think is not at all out of line, because it does give those who are handicapped, for example, who have a more difficult time getting to a place where registration is allowed, an opportunity to do that.

Senator SPECTER. What would your view be about registration when you apply for an automobile license, requiring that there be proof of residency, since you don't have to be a resident of a State to get an automobile license in a State, customarily.

Senator MCCONNELL. We just had a hearing on that in the Rules Committee last week, and all the major Kentucky election officials were there at Senator Ford's invitation. They were very apprehensive about that. I am really undecided on that issue at the moment.

There are an awful lot of people who have automobile licenses, for example, who are between 16 and 18. There are some rather onerous requirements for policing that in terms of trying to avoid getting a whole lot of ineligible people on the rolls. I think it is worth taking a look at but, as I said, all of the election officials

from Kentucky—all of whom were Democrats, I might add—testified against the motor-voter bill.

Senator SPECTER. Well, it seems to me that there are ways where we could make it easier to register, by mail or with motor vehicles or perhaps in some other locales besides the one spot, say the Bureau of Voter Registration, which would open up the access and still avoid the pitfalls of rampant fraud by same-day registration.

I commend you, Senator McConnell, for your activity in this field and related fields on the election process. I, for one, look forward for this subcommittee and the full committee to work with the Rules Committee to see if we can't structure something which would accommodate the objectives which we all have.

Senator MCCONNELL. I thank you, Senator Specter. I must say that when you come from a State like mine with a long history of election fraud, you get very nervous about these kinds of proposals. Senators from South Dakota and Minnesota and places like that, where there is literally no history of this, don't find any of these measures very disturbing.

Election fraud, the propensity to play those games on election day, does appear to be regional in nature. It seems to be confined for the most part to one-party areas, both in rural areas and in some big cities, and we must be very careful before we mandate any procedures at the national level that exacerbate a preexisting tendency to engage in the kind of activities that diminish the vote of every law-abiding citizen.

Senator SPECTER. Senator, my State has a longer history of voter fraud than your State.

Senator MCCONNELL. I don't see how it could.

Senator SPECTER. Well, in part because my State has a longer history than your State. [Laughter.]

My State even has a longer history of voter fraud than Illinois, only because we have a longer history than Illinois. I think Philadelphia and Chicago regrettably are the Nation's leaders, and I say that with some deference to Bostonians. [Laughter.]

Thank you very much, Senator McConnell.

Senator MCCONNELL. Thank you, Senator.

Senator SPECTER. Thank you, Mr. Chairman.

Senator SIMON. Senator Kennedy.

Senator KENNEDY. I don't think we are going to be spending a lot of time, but maybe we should, on the question of fraud. It was always my understanding, when you are looking at election fraud, it is much more related to the stealing of ballot boxes and to actions by voting officials than it has been to individual voters. I think that is the case wherever we are talking, whether it is Philadelphia or Boston or in Kentucky. I mean, that has been certainly the history that I have read. I think that that is a distinguishable factor and it shouldn't be lost in terms of our own consideration of this legislation.

As I understand, the election officials of Kentucky in that Rules Committee hearing supported postcard registration, did they not?

Senator MCCONNELL. Mail registration but not direct——

Senator KENNEDY. Yes, mail.

Senator MCCONNELL [continuing]. Not same day, not same day.

Senator KENNEDY. No, no, but they did support mail.

Senator MCCONNELL. Yes, with proper verification.

Senator KENNEDY. So here are people who have a pretty good understanding of Kentucky politics as well, and felt that the basic integrity of the Kentucky system could be preserved through that.

I thought, Mr. Chairman, on most automobile licenses you had to give your age. I don't know. Maybe I am off, but I thought that——

Senator MCCONNELL. Yes, you do.

Senator KENNEDY [continuing]. On most of the ones you had to give your age, so this idea of being troubled because of using automobile licenses, because we may get some people that are underage that want to vote and that sort of thing, that type of a fraud, I don't know whether I see that as as big a problem as the Senator from Kentucky does.

Senator MCCONNELL. It may ultimately not be a big problem. It is a legitimate question to raise, in terms of the number of people that would be thrown onto the rolls rather quickly.

Senator KENNEDY. You mean a lot of people would go down and get an automobile license number if they could——

Senator MCCONNELL. Well, I think what you would have, you would have a huge number of new potential voters on the rolls just immediately. In our State, of course, in two areas of my State, one of which is totally Democrat and one of which is totally Republican, there would be massive cheating in the next election with all of the people showing up who are on the rolls, who had absolutely no intention of voting.

Senator KENNEDY. Well, I thought that the earlier questions had to do with people that got automobile licenses, and I thought the earlier response had to do with the problems of getting accurate information because of the age issue. I thought that was your——

Senator MCCONNELL. Well, Senator, even assuming you could get accurate information and you had an immediate——

Senator KENNEDY. Well, you can, as I understand it.

Senator MCCONNELL. OK, I will grant you that. Let's assume that 16- and 17-year-olds are not a problem, and you have a massive increase overnight in the number of people on the books, I can tell you that in my State what would happen, once those lists were available, is that a lot of those people who were out of the county and not around would find themselves voting, both parties, in certain parts of our State.

Senator KENNEDY. Well, maybe, as I understand, they vote out of the county. The county would have their home address and they would be listed in those particular ways. I mean, maybe this is technically a very large problem. I don't understand it to be so, but the Senator from Kentucky does. I understand the postcard registration concept was endorsed in the Rules Committee by the Kentuckians.

Just a final point, Senator: Senator Cranston mentioned about the four States—Maine, Wisconsin, North Dakota, and Minnesota—all of whom have either a combination of open day registration or a combination of these other elements, and were in the very top numbers of participation in the last election. Do you have any information about the increase of fraud in any of those States?

Senator MCCONNELL. In the States that have same day? They have no history of it.

Senator KENNEDY. No; the ones that were mentioned, North Dakota, Wisconsin, Maine, and Minnesota, are all States—North Dakota in the case of having no registration, the others having the same day over the period of about the last 4 years. They this time were in the top five States—I mentioned four—they were within the top five States of voter involvement. I am just wondering whether any information has come to you to indicate that there has been any widespread fraud in any of those States?

Senator MCCONNELL. Well, as I said before I began my prepared statement, when I used to teach this course in the seventies, one point I used to make to the students is that voter fraud has a lot to do with where you live, and there are some States that just have no history of it. Those States that you mentioned, I believe, are among those that have no history of it.

With reference to the motor-voter bill, one thing that I neglected to mention, that I think we do need to find out before we pass that—and I may end up supporting that——

Senator KENNEDY. Well, if I understand your answer——

Senator MCCONNELL. Let me finish my point, Senator Kennedy.

Senator KENNEDY. Yes. Well, we all have time limitations, and you can just answer no or yes.

Senator MCCONNELL. No or yes on what?

Senator KENNEDY. To my question.

Senator MCCONNELL. With regard to fraud in those States? They have no history of it, ever.

Senator KENNEDY. Well, you didn't find any in the last election. I mean, you are an expert——

Senator MCCONNELL. There is no history. In certain areas of the country there is no history of it.

Senator KENNEDY. Yes, but if you will listen to the question, maybe I can get an answer.

Senator MCCONNELL. I think I heard the question.

Senator KENNEDY. Well, then, give me an answer, yes or no. Do you know, does any of your——

Senator MCCONNELL. The answer to your question was——

Senator KENNEDY. Does any of your information, as a person that I am sure has spent a lot of time on this issue, you have come up—Maine, Minnesota, and Wisconsin, if I am correct, have same-day registration, North Dakota, no registration——

Senator MCCONNELL. Yes.

Senator KENNEDY. Those four States are in the top five States in voter turnout in this last election, 1988. Do you know of a single incidence of voter fraud in any of those cases, or alleged voter fraud in any of those cases in the last election?

Senator MCCONNELL. I don't, but it proves absolutely nothing, because this bill is going to mandate procedures where there is a history of election fraud, and that is the point.

Since motor-voter came up, I want to mention the one other thing that is distressing about that, and that is the potential cost of it. We need to be absolutely certain what kind of costs we are going to be levying, mandated costs presumably on the States, to go to a motor-voter system, perhaps $100 million or more, and we need to be concerned about those costs that we are going to mandate vari-

ous localities to pick up. That is not the bill we are talking about today, but that is another aspect of it.

Thank you very much, Mr. Chairman. I appreciate the opportunity to be here.

Senator SIMON. Senator Metzenbaum.

Senator METZENBAUM. I have no questions.

Senator SIMON. Thank you, Senator McConnell. I might mention at the next hearing we will have State and local election officials who can get into the area of specifics.

Our next witness is a distinguished former Member of the House who gave an inspiring message last night at the Leadership Conference on Civil Rights, a former colleague of mine from the House. We are very honored to have—it says Prof. Barbara Jordan. We knew you before you ascended those heights, Barbara Jordan. Good to have you with us.

Senator KENNEDY. May I just take one moment, Mr. Chairman? I too want to join in welcoming Congresswoman Jordan to this committee. I think our Nation is in her debt for a very long career of public service.

I might say that she brings a very special competency to this issue, which this committee will find out very quickly. She testified before the Judiciary Committee on the whole issue of availability of voter registration, the poll tax, and registration conflicts that have existed in a part of the world that she knows all so well, and we learned a great deal from that. She comes as a real expert witness on the matter that we are talking about today, and I look forward to hearing her testimony.

STATEMENT OF PROF. BARBARA JORDAN, LBJ SCHOOL OF POLITICAL AFFAIRS, UNIVERSITY OF TEXAS, AUSTIN, TX

Ms. JORDAN. Thank you, Mr. Chairman.

I am very appreciative of the opportunity to add my voice to those who support this legislation. It is legislation whose time has come. It is time for us to vote closure on implementation and enforcement of the 15th amendment of the Constitution of the United States.

The 15th amendment is very simple in what it has to say: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Now section 2 of that 15th amendment says: "The Congress shall have power to enforce this article by appropriate legislation."

Mr. Chairman, this is appropriate legislation to enforce the 15th amendment. The amendment was declared ratified on the 30th of March, 1870; 119 years is enough time to finally close enforcement of that amendment. As long as barriers remain to the right to vote, we have to act, and barriers do remain to the right to vote. We would like to say that that was not the case, but that is the case. Barriers to the right to vote remain.

The right to vote is so fundamental. What makes it fundamental? It is in the Constitution. The Constitution is its base. It is the highest level of right that can be granted to a citizen. It is really the linchpin of democracy, and you know what a linchpin is. The

democracy revolves around it, the linchpin. "Here, sir, the people govern." "We, the People * * *" "* * * Of the People, By the People, For the People. * * *" People, the engine of democracy.

If democracy, then, is the form of government for which the people are the engine, then, Mr. Chairman, it is a self-evident truth that people ought to have access to this primary level of decision-making—the vote. For some to be denied access is to weaken democracy and in fact devalue democracy—devalue it because people consent to be governed. That is the act which legitimizes governmental activity.

Consent of the governed is not idle rhetoric. Consent of the governed is a very precious phrase which gives legitimacy and authenticity to governmental action. For that reason, you as a part of the Governors should be in the business of expanding the electorate and increasing participation of the voter.

We have every reason to be embarrassed by the low voter turnout, particularly in national elections. It is the lowest of major world democracies. In Presidential elections, only one of two Americans casts a ballot.

But it is a mistake to cite that reality and conclude that Americans are apathetic or lazy or lacking in civic pride or lacking in attention to civic duty. That is not the case. The fact is that Americans who are registered do vote. For those who are registered, voting is in the 80-percent range consistently, and that is the same level of Western Europe.

There is a very large pool of eligible nonregistered people—70 million nationally. There are many reasons given for this low level of registration. Some of the reasons given: Some say it is the lack of a universal registration system. Every other major world democracy has either a universal registration system or a government canvass, whereby the burden of registration is on the government rather than the individual.

Now I know that you may have some problem with that, in that we have a general view that citizens ought to exercise some responsibility before they are entitled to rights and privileges. But the central point here is that our registration laws are a patchwork of 49 widely varied systems, some of which include disincentives to registration.

Only one-half of the States have mail-in registration. In my State of Texas, we have mail-in registration, but the others, the others require a personal appearance, usually at a court house, during working hours, simply to register to vote.

Forty-four States purge the voters from the rolls for simply nonvoting. The necessity to cleanse the voting rolls of deadwood should not become a tool for the withdrawal of a fundamental right.

A profile of the nonregistered eligible voter raises the specter of discrimination in all of its historical ugliness. Of the 70 million eligible but nonregistered Americans, two-thirds or approximately 47 million have incomes below the national median. That says something. A recent election study, one in 1980, found that the poor made up just under one-quarter of the population, yet last year only 17 percent of them turned out to vote, while the more affluent, who made up slightly more than one-quarter of the population,

cast 35 percent of the votes. The more affluent have twice the voting strength of the poor.

The history of the right to vote, from the ratification of the 15th amendment to the present, does not present a pretty picture for us to look at. It certainly does not present a pretty picture for a country whose watchwords include freedom and equality. The long march from March 30, 1870, that long march from that time to this time includes violence, terror, poll taxes, literacy tests, lengthy residency requirements, marches, death, blood, sweat, tears--all of that.

It is time now to sign off, sign off on this right, and state with confidence that every American has the right to vote and that the requirement for registration will not burden that right. If you enact this bill, you could make that statement and it would be true.

Thank you for your attention, Mr. Chairman. I will answer any questions you have.

Senator SIMON. Thank you for your eloquent statement. I wish we had every Member of the U.S. Senate here to listen to you.

You mentioned that disproportionately the poor are among the unregistered. One of the realities today is, we have a book by William Julius Wilson called "The Truly Disadvantaged," talking about the underclass in our society. We are increasingly segregating ourselves on the basis of economics. It becomes easier and easier for politicians to ignore the poor.

Do you think, if we were to establish a system of registration so that more of the poor could vote, that they would be listened to a little more?

Ms. JORDAN. Mr. Chairman, my quick answer to that question is yes. If more of these persons who are falling into that unfortunate terminology of Wilson's underclass, if more of them just simply knew that they were counted among those who are registered to vote and could exercise that choice that all of us have who can vote, I believe that we would see the decisionmakers pay attention to those who are less fortunate and more vulnerable than some of us.

I believe that it is that kind of a voice that gives them access. If they could register to vote and did register to vote, then they would get into the loop of information about what the issues in an election are, what needs to be communicated in terms of the knowledge you need to involve yourself in the issues, and those who then make those decisions which have so much to do with the way we live would, I believe, listen to those people who could exercise the franchise, I do believe, yes.

Senator SIMON. Nationally, among the groups that are down at the bottom economically are the Hispanics. In Illinois they are among those who do not vote in larger numbers than any single ethnic group. Among Hispanics in Illinois in the 1984 election—this is the last election we have detailed statistics for—128,000 voted and 259,000 did not. You are from a State with a very sizable Hispanic population. Does that sound like the kind of proportion that is probably taking place in Texas, also?

Ms. JORDAN. I believe that that would comport with figures which would apply to Texas also. You are going to hear from our

secretary of state, and I think I am correct in saying that he is the election officer there. Even though he is going to be slightly on the opposite side of this, he is not as misguided as you are going to think he is. [Laughter.]

I say that, Mr. Chairman, because we were together this day last week in Texas, testifying before a committee in the Texas Legislature about agency registration and driving registration, and so he really is on the cutting edge. He just has some problem with States rights, but that is a little——

Senator SIMON. But you will straighten him out on that, won't you?

Ms. JORDAN. Leave him to me, please. [Laughter.]

Senator SIMON. Well, I mentioned the Hispanic vote because there is this thing floating around, periodically, that says we ought to make English the official language, and in fact English really is the official language, but we have a hard time getting votes from those same people when we want to have classes to teach people the English language. Maybe some of them would be voting for those classes to teach people the English language. That is kind of a leading question, but I will give it to you anyway.

Ms. JORDAN. But I agree with you. I would like to see the Hispanics have this increased opportunity, also, so that they could get their voice in, as all American citizens should want to have that.

Senator SIMON. OK. Senator Kennedy.

Senator KENNEDY. Thank you.

Congresswoman Jordan, I am wondering whether you might briefly outline to us what your own life experience was like in reaching elective office, in relationship to these kinds of barriers. Did it affect you? How did it affect you? I have heard you speak about that before.

Ms. JORDAN. Yes.

Senator KENNEDY. If you could give us just a little bit of the flavor of that, I think it would be enormously valuable.

Ms. JORDAN. Senator, in the State of Texas for years we were unable, black Americans in Texas were unable to exercise the franchise in an unimpeded way. We had barriers like the Democratic primary that was closed, and we had to go to court to get the *Smith* v. *Alright* decision so that black people could vote in the Democratic primary. It was a whites-only.

When I got out of law school in 1959 and returned to Texas, first working in the campaign of John Kennedy and Lyndon Johnson for the Presidency and Vice Presidency of the United States, I became so involved in politics that I wanted to run for public office, and so in 1962 I did run for the State House of Representatives. I lost that race. I got about 46,000 votes but I lost.

In 1964, then, I said maybe—since that was just my first race—maybe the people didn't know me well enough, so I should run again, so I ran again in 1964. At that time the people knew me a little better. I got 64,000 votes but I lost, and these were at-large races—that is, running for a State representative seat, I had to run over the entire, throughout the entire county, Harris County, TX, and I couldn't win.

So why could I not win election to the State House of Representatives? The districts were so malapportioned in Texas that it was

impossible for a person of different race or characteristics than the majority community to win an election.

And so the Supreme Court of the United States finally took cognizance of this fact and, in the 1962 decision of *Baker* v. *Carr,* mandated that States apportion legislators in a manner which would represent that one person represented one vote. It was after that *Baker* v. *Carr* decision that the county I lived in was reapportioned and I was successful in a race for the State Senate in Texas.

Senator KENNEDY. So the kinds of opportunities for involving people in the election process—let me go back. I suppose there would be a lot of people in Harris County, a large county, that might have been discouraged from voting, knowing that they were supporters of yours, knowing that there was no chance that you were going to be nominated and elected.

Ms. JORDAN. Nothing could have been more crushing or a greater disincentive to vote than the feeling that whatever you did would make no difference. You could have no impact. What you did didn't matter. That is the feeling which would have prevailed.

Senator KENNEDY. Is it your conclusion, Congresswoman Jordan, that the knocking down of the poll taxes and these at-large elections, when they were constructed for racial purposes, has that made a difference in the community which had been prevented from involving itself in the election system in Texas? Generally in Texas, or if you want to talk about Harris County, has that made a difference in terms of their willingness to involve themselves and participate in the system?

Ms. JORDAN. It has made a profound difference in the willingness of the citizens to involve themselves in political activity in Texas. As you well know, it took a constitutional amendment to get rid of the poll tax. The poll tax did have an economic disincentive impact on voters in Texas. That is no longer the case, and I can say with pride that Texas does have one of the most liberal, now, voter registration efforts of any of the States, and we are proud of that.

Senator KENNEDY. I understand they have the mail-in registration program now——

Ms. JORDAN. Correct.

Senator KENNEDY [continuing]. But they do not have agency-based or motor-voter registration. Do you think there could be even more done to facilitate registration?

Ms. JORDAN. Well, of course, the agency-based registration is a bill which is pending in the legislature as it presently meets. It did not encounter any opposition last week. I don't know whether opposition has surfaced, but Texas is on really the cutting edge. We like to brag about that, Mr. Chairman and members of the committee, because we are not on first base in so many other areas.

Senator KENNEDY. Well, I want to just thank you again. I know that you changed and altered your schedule a good deal to be with us here this afternoon. Again, we certainly want to congratulate you on a very richly deserved tribute that you received last night from the civil rights organizations, and we want to thank you again.

Ms. JORDAN. Thank you, Senator.

Senator KENNEDY. We always call on you when we need the quiet but passionate, informed view about justice in this country.

Yours has been a lifelong commitment to justice in so many ways, and we are grateful to you for your appearance.

Ms. JORDAN. Thank you, Senator.

Senator SIMON. Senator Metzenbaum.

Senator METZENBAUM. Congresswoman Jordan, we are always glad to see you, happy to see you again. I always enjoyed it when you visited our State, and we miss you in the Halls of Congress and welcome you back.

Ms. JORDAN. Thank you.

Senator METZENBAUM. I just have one question. I assume you are familiar with the so-called ballot security program that was conducted by the Republican Party in Dallas County in Texas. Could you tell us, if you know, what kind of effect tactics such as posting a sign warning about criminal prosecution in a polling place, does that have an impact on minority voters more so than on whites?

Ms. JORDAN. I know, Senator, that you might think, wouldn't people know at this day and at this time that that kind of threat really did not have any credibility? The problem is that there are some people who are very sensitive to those kinds of prospective charges being leveled against them, and are then dissuaded from engaging in the electoral process as every other normal citizen would have. Yes, those kinds of things do cause people not to participate, not to vote. It causes them to be less than full-fledged citizens, when they hear about it.

Now, as you no doubt know, that program was ended and there were apologies all around for ever starting it, but that did have its bad effect.

Senator METZENBAUM. Thank you very much. Again, I appreciate your continued leadership role in this area and so many others as well.

Ms. JORDAN. Thank you, Senator.

Senator SIMON. If I could just follow through on this, in the State of Nevada, as I understand it—and I do not know the details, and it is possible that we will get into this in a separate hearing—but notices were sent in the mail or delivered to the homes in minority neighborhoods saying these are the things, "This is a violation of Federal law," and a series of things indicating that you could be subject to imprisonment and so forth. Now none of us wants to see the Federal law violated, but those things are intimidating or can be intimidating, if I may just follow through on my colleague?

Ms. JORDAN. Mr. Chairman, yes, that can be intimidating, and there were instances of that in south Texas in 1988 in the Presidential election. South Texas, the valley area, where there are great numbers of Hispanics, there were efforts to hold down voter participation at that time. There were these kinds of flyers that would go out, and the calls were coming in to Democratic headquarters at that time saying, "Will someone come here and let people know that this cannot have any impact upon them personally, and tell them they can still get out there and vote and participate?" That kind of thing does cut. It hurts. It dampens.

Senator SIMON. We thank you again, not only for your testimony but for your leadership, in being such a symbol of everything that is good in this country. We are very, very proud of you, honored to have you here. Thank you very, very much. [Applause.]

The next witness is not here yet. Let me if I may suggest, since Reverend Jackson is on his way here, that the first member of this next panel could testify at this point. Antonia Hernandez, is she here?

Ms. HERNANDEZ. Yes, I am here.

Senator SIMON. OK. Senator Kennedy.

Senator KENNEDY. Can I have the privilege of introducing Antonia Hernandez? I was fortunate to have her work for me for a number of years, and she was very active in a variety of the Judiciary Committee's activities, and was a great professional help and assistance to me and a wonderfully warm friend. She has been providing important public interest legal guidance to many people who need it. We are very happy to have her here, and I know her testimony will be very useful.

Senator SIMON. Thank you, Senator Kennedy.

Ms. Hernandez is the president and general counsel for the Mexican American Legal Defense and Educational Fund. We are very pleased to have you here.

STATEMENT OF ANTONIA HERNANDEZ, ESQ., PRESIDENT AND GENERAL COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE EDUCATIONAL FUND, LOS ANGELES, CA

Ms. HERNANDEZ. Thank you. First I would like to thank you for the invitation to come and present our views to you, and thank you, Senator Kennedy. It is nice to be on this side.

I have submitted extensive written testimony, so I will not go through that. What I will attempt to do is to summarize the concerns that we have, and also to support the legislation. I think, as Ms. Jordan has said, the time has come to truly eliminate the barriers to enjoying the right to vote, and we can accomplish this through voter registration.

I must first comment and, I guess, respond to the comments made by the Senator from Kentucky on the issue of the undocumented alien. I really think that it is a disservice to this committee and to the issue to raise the bugaboo of the hordes of undocumented aliens perpetuating fraud in the electoral process. As we all know, it is nice to make statements about the issue, but in reality I would venture to say that the number of people who have been convicted of voter fraud are few and far between.

In the Hispanic community, we are concerned with promoting and protecting the voting rights of all Hispanics. On this issue, we are concerned about getting U.S. citizen Hispanics to participate in the electoral process.

We have talked about that fundamental right to vote, and in reality it is a right that hasn't really been exercised by a majority of the people in this country. Very few people participate in our electoral process. The reasons are complex and numerous. It is not an issue unique to minorities, nor to Hispanics. However, for the Hispanic community I think that there are certain barriers that this legislation would eliminate, and there are three primary areas that I would like to address.

The first one is agency registration. Agency registration would attempt to get those voters and the individuals who participate

least in our community. Several studies have been commissioned that indicate that people who are young tend to vote less, people who are poor tend to vote less, people who historically have not participated in the political process tend to vote less.

Those characteristics define the Hispanic community—we are a young, poor community. Participating in voting and in the electoral process is a very difficult thing to do. We also are a growing community, and I honestly believe that the future of this country depends on incorporating and assimilating these individuals into the process.

Please allow me to give you a couple of examples with regard to the barriers that our community faces. For over 22 years we have tried to change the electoral process so that the vote of the Hispanic individual counts. We have found that once you open up the process and you change at-large systems to single member districts, there remains a reluctance and a resistance by those who hold the power—whether they be Democrats or Republicans—to let go of their power and to include these individuals.

We see this in our redistricting efforts. After promising our community that, if they participate in the political process, their vote is going to count, it is very disillusioning to find that they will vote but their vote doesn't count, or once they have registered, and they have to go through insurmountable obstacles to register, their registration is purged.

In the five southwestern States where we concentrate our efforts, there is no uniformity in the type of voter registration systems used. The issue of same-day registration or registration very close to the day of voting is a must if we are going to change the participation of our community. Studies have shown that the closer to the last day to register for election day, you have a higher degree of participation. I think lower voter participation rates are really reflective on the 20th and 21st century and how people get elected, and that is through the media, through television.

As you all know, the interest of the politicians, the interest of the community is not aroused until very close to the day of the election. Prior to 3 weeks to any election, it is quite boring. People just don't tune in and are not paying attention, so that I think that same-day registration or registration close to election day is a must.

Second, we cannot have mandatory purging of registration rolls. We all know what purging does to the minority community—to the black community, to the Hispanic community. Purging will have disastrous effects. Let me give you an example.

We have been working with officials from the State of New Mexico for quite some time. They have recently changed to a 2-year purging requirement. It took us over 4 years to register, in one particular county, over 1,800 new voters. If in fact they proceed with the purging requirements on a 2-year basis, we are going to lose 2,000 voters, more than we gained through our voter registration efforts, so that the two efforts sort of zero themselves out.

The second problem that we find with the lack of uniformity in registration methods is the discretion of county voter registration officials. We have had instances where affidavits and applications have been refused because the individual filled out the application

in blue ink versus black ink. When the local establishment which happens to be nonminority has control of the electoral process, we find that they will not permit or expand the benefit of voting to minorities, and it is critical that we realize what happens there.

Recently in Illinois, something that I am sure you will be interested in, we had to go to court because the county registrars refused to deputize more individuals to register voters. We finally had to go to Federal court to force the county, Cook County, to deputize additional bilingual registrars, in order to get people registered. Within a weekend we were able to register over 100 new people.

Our community wants to vote. Our community wants to participate in the electoral process, notwithstanding what is said, but I believe that it is important to eliminate the kind of barriers that I have mentioned here.

You talk about voter fraud. It is committed by both the Democrats and the Republicans, and is played against our community.

Recently, in the 1988 election, as you know, in Santa Ana the Republican Party called in armed guards and questioned every Hispanic citizen about his right to vote. The intimidation and the message that this kind of action sends to our community, is chilling. The case is still being investigated. We had the situation in Texas where radio messages were broadcast 2 weeks before the election, only in Spanish, only in the Hispanic community, warning that if you were not a citizen, and you voted, you were subject to 10 years' imprisonment for committing fraud during the voting process.

Factors like this prevent our community from participating. I believe that if we are serious about opening up the process and getting not only the Hispanic community but all of society to participate in our democracy, then we are going to have to deal with registration laws that prohibit or inhibit people from exercising their right to vote.

Thank you.

Senator SIMON. We thank you very much.

The suit in Federal court, as I understand it, was for Will County rather than Cook County. Is that correct?

Ms. HERNANDEZ. I am sorry. Yes, it was Will County.

Senator SIMON. Will County, and it is simply, what you are trying to do through the suit, is to get more registrars so that people can get registered to vote. Is that correct?

Ms. HERNANDEZ. Well, we seek to get more bilingual registrars into the Hispanic community. What we find, not just in Illinois but particularly in Colorado, Texas, and New Mexico, is that four registrars are assigned to Anglo communities, none of them are bilingual, and they are located at a great distance from where our community can participate. They also allow only in-person registration, which means that you have to go wherever they are and make a deliberate effort to register to vote. The various suits that we have filed have been to hire more bilingual registrars and to assign registrars to the Hispanic community where they are needed the most.

Senator SIMON. When we talk about noncitizens voting, and I do not favor having noncitizens eligible to vote, but it is very interesting: In the early part of the history of our country, noncitizens had the ability to vote.

I think our next guest has arrived.

Ms. HERNANDEZ. I think he has arrived.

Senator SIMON. Thank you very, very much.

Senator KENNEDY. Could I ask Antonia——

Senator SIMON. Senator, yes.

Senator KENNEDY. Just briefly, Antonia, purging is something that is a part, will be made an issue during the course of the consideration of the legislation. Why is it important? What do you think the dangers of such an activity really are?

Ms. HERNANDEZ. Well, let me give you a couple of examples.

Senator KENNEDY. People will say, "Well, we want to make sure. We all agree you ought to have a greater availability, accessibility. Why not get people that are dead and have moved, why not get them off the list?" Now how do you answer that with regard to its impact on the minority community?

Ms. HERNANDEZ. We are not opposed to having a system where you remove individuals who have passed away, who have been convicted of a crime, who are not mentally capable of participating in the voting process. What we are opposed to is mandatory purging for nonvoting, particularly when you have such a short period of time as 2 years.

As you know, in our community it takes a great effort and expense to get people to register to vote. Once Hispanics are registered, they believe that they are registered to vote anytime in the future. They have gone through quite a bit to get there. If they do not participate in an election within a 2-year or a 3-year period of time, and if they are purged—for minorities, for poor people—it is eliminating those people from voting.

I really don't see a good reason for purging voter rolls. I have heard about the purging. I know of the concern for clearing or cleaning our records, but I don't really think that that is the real reason for purging. In the South and in the Southwest, it is a political tool to inhibit the right of people who are just emerging, like Hispanics, from participating in the process. I would not be opposed to something, to a process that aimed at cleaning the rolls, but the 2-year purge will harm the black and the Hispanic people, no doubt about it.

Senator KENNEDY. Well, I appreciate that. You know, it is not really relevant—the lesson is, but the names aren't relevant to this experience—there are several Members of the U.S. Senate today who missed years of voting, in terms of other periods of their lives. I doubt if they are missing any of it now, but at other times. I mean, we have seen, all of us have different experiences with the procedures in our own State and other States, but I think that this is an extremely important point that she has made, and I am glad that she had the opportunity to explain it.

Senator SIMON. Thank you.

Senator Specter.

Senator SPECTER. Ms. Hernandez, when you comment about problems in the Southwest, have you observed any similar problems in States like Pennsylvania?

Ms. HERNANDEZ. The problems in the State of Pennsylvania—and in fact I have been talking to some of the Puerto Rican community in the State of Pennsylvania—are the same obstacles that

are encountered by poor people, and particularly people who have not been voting in the past. As you all know, it is a mental state of mind. It is a learned ability; you learn to vote. When you are not part of the voting process, when you haven't developed the psychology to participate in that process, and when you have all the other barriers, you are not going to have full participation.

In Pennsylvania, as you may know, the voter participation is very low in the Puerto Rican community. One of the problems is, of course, the lag time between registration and election. I think another problem would be the issue that is addressed in this legislation, agency registration. It is critical to go to the people, to the social service agencies and the governmental agencies that they deal with on an everyday basis. I think that if you do that, you are going to encounter greater participation by minorities, Puerto Ricans and Hispanics.

Senator SPECTER. Would it concern you particularly if there were not to be same-day registration?

Ms. HERNANDEZ. I have heard concerns about the possibility of fraud with same-day registration, and I believe that the record is clear. There are three States that have same-day registration, and there is one State that does not have registration and you can go and vote. I have not seen any documentation of fraud in any of these instances.

What I am about to say is my own opinion, but whenever the issue of fraud is raised, the implication is that it is being committed by the minority community, those in the South, the Southwest, those new voters who don't know how to behave. My response is similar to the statement that I made with regard to undocumented aliens—I have yet to see massive documented fraud by undocumented people. It goes contra to their whole lifestyle of not wanting to come into contact with governmental entities.

Unless someone substantiates that there has been widespread fraud, I think that it is about time we tried same-day registration, because people are not turning out to vote, and it is not just blacks and Hispanics. If we value democracy as much as we say we do, then we had better start getting the people to participate in our democratic process.

Senator SPECTER. Ms. Hernandez, there is not a suggestion, as far as I am concerned, that it is the minority community which is engaging in fraud. It is the majority community which is engaging in fraud. What concerns me is the machine politicians engaging in fraud, and that is the concern which I have.

Let me ask the same question in a little different way: Do you think that the substantial objectives that you and the sponsors of this legislation seek could be obtained by a variety of procedures other than same-day registration?

Ms. HERNANDEZ. I want this legislation. I think it is critical. I don't really understand the concerns people have with regard to same-day registration, but I know that they are sincere and real in some instances.

I might suggest a 10-day period between registration and the actual election. There is nothing magical about 30 days or 40 days and, as you know, the interest—as I stated earlier—the interest of the public and the politicians in any campaign peaks closer to elec-

tion day. Thirty days before any Presidential election people just have a sense that there is an election but really aren't in tune with what is going on. If there is a serious concern about same-day registration let's discuss a reasonable period of time, but not 30 days.

Senator SPECTER. Thank you very much.

Thank you, Mr. Chairman.

Senator SIMON. We thank you. It is good to have a former Judiciary Committee staff member here as a witness.

[The prepared statement of Ms. Hernandez follows:]

TESTIMONY OF

ANTONIA HERNANDEZ
PRESIDENT AND GENERAL COUNSEL
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND
MALDEF

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING S.675
EQUAL ACCESS TO VOTING ACT OF 1989

MAY 10, 1989

30-354 0 - 90 - 3

Mr. Chairman:

Thank you for this opportunity to present the views of the Mexican American Legal Defense and Educational Fund ("MALDEF") on S. 675, "Equal Access to Voting of 1989".

MALDEF was incorporated twenty-two years ago for the specific purpose of providing the Hispanic community a national civil rights organization which would dismantle the barriers that historically prevented Hispanics from fully participating in American society. As the organization has evolved various programs have been discontinued while others have been developed in response to a changing society and changing needs of the Hispanic community, as well as the goals of this organization. One program that has remained of primary importance to the Hispanic community and to MALDEF since the inception of the organization is that of Political Access.

As Justice Black so eloquently and accurately stated in the opinion he penned in the 1964 case of Wesberry v. Sanders:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws; other rights, even the most basic are illusory if the right to vote is undermined.

Wesberry v. Sanders, 84 S.Ct. 526, 535 (1964) (emphasis added.)

The Hispanic community of the United States is acutely aware of the truth of Justice Black's observations as it continues today the sometimes arduous struggle for equal opportunities in education, employment, economic development and political access.

MALDEF, is today at the forefront of efforts in the state of Texas to secure equalized funding in public schools at both the primary and secondary levels of education. The differences created by the unequal system of funding for school districts in Texas is graphically illustrated by a comparison of the equipment and structures in the affluent north Dallas school district of Highland Park, with a 3.5% minority population, to those of Edgewood Independent School District in the barrio of San Antonio, having a 83% minority population.[1/] This MALDEF effort could ultimately benefit thousands of children throughout the state. The final outcome of this litigation however, is entirely dependent on the elected officials of state government. The legislative branch created the challenged financing system and has the power to resolve the issue. The executive branch, creates state policy and determines how long and how hard to resist change in the school finance system. Finally, the judicial branch interprets the laws and the policies of the state. All three branches of Texas government are elected positions. Thus, the power of the vote, and the importance of inclusion in the political process comes home to Hispanics through our children.

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[1] Highland Park Independent School District ranks at number 102 in wealth in the State, and Edgewood Independent School District at 1070 of the 1100 school districts in the State of Texas.

Education is the key to the future for the Hispanic community, but the key to the quality of that education is the ballot box. Quite simply, in every arena where Hispanics have made gains or are seeking increased opportunities, the key to these opportunities has been and continues to be the fundamental right to vote and power of that vote.

Today I am before you to bring home to this Subcommittee how vital political access and the right to vote is to the Hispanic community of the United States. The history of the Hispanic struggle for voting rights fairly parallels that of the black community in this country. In fact, in the landmark case of White v. Regester, 93 S.Ct. 2332 (1973), relied on by Congress as the basis for its 1982 amendment to Section 2 of the Voting Rights Act, the Supreme Court noted that the Hispanic struggle for equal political access has in some respects been even more difficult than for other minorities.

> The typical Mexican American suffers a cultural and language barrier that makes his participation in community processes extremely difficult... particularly with respect to political life... "[A] cultural incompatibility... conjoined with the poll tax and the most restrictive voter registration procedures in the nation have operated to effectively deny Mexican Americans access to the political processes in Texas even longer than the Blacks were formally denied access by the white primary." 343 F.Supp. at 731.

White v. Regester, 93 S.Ct. at 2340-41.

As a result of the passage of the Voting Rights Act, there has been some movement forward over the past twenty-five years for Hispanics. Yet,the access we seek to the political process remains far from equal. Many of the overt barriers to the political process such as all white primaries and poll taxes have been eliminated. The elimination of de jure discrimination in the electoral process came about as a direct result of federal court and congressional intervention into state political processes.

More recently, Section 2 of the Voting Rights Act has been used by Hispanics and other minorities to slowly, in a case by case manner to dismantle the exclusionary at-large election systems. Political access work still proceeds in Texas where MALDEF has maintained an active, formidable litigation effort for over twenty years. The 1985 sweeping legislative reform of at-large election systems in New Mexico came as a direct response to a plethora of federal litigation filed by MALDEF and other organizations. In Colorado, the first such challenge filed by MALDEF is still pending before the Tenth Circuit. In California, the first definitive Section 2 case in the Ninth Circuit, striking down the at-large election system of Watsonville, again filed by MALDEF, has just been affirmed by the Supreme Court. Very simply, what access we have achieved through these victories has been through a long arduous process that has always required federal intervention, and we have many years to go before our access is indeed equal.

Throughout these years of struggle, always requiring litigation for success, the Hispanic community continues to be confronted with barriers to political access that serve to frustrate the gains we have made. Those barriers, while obvious to us, are not so clear to the rest of the world because they are deeply entrenched and institutionalized procedural barriers to registration. The resulting discrimination is de facto, and in many ways more subtle then barriers like at-large election systems.

Civil rights reforms which struck down the most glaring voter registration restrictions failed to impose obligations of affirmative change to counter the years of the discriminatory impact of those restrictions. The minority community, as a result, has been left with no effective means to redress disenfranchising barriers. These barriers are continually proposed and imposed for the state articulated purposes of "protecting the integrity" of the electoral process. Moreover, registration is considered not a constitutional right, but a privilege of a lesser level. Unless registered, therefore, one enjoys little protection of the right to vote. This tremendous gap in protections has significantly detracted from the minority community's efforts to secure equal opportunities for political access.

As a newly emerging group in the political arena, Hispanics throughout this country are only beginning to learn the value, importance and power of the vote. The exercise of the right to

vote is a cultural and societal behavior, long established for the majority in this country, but a "privilege" that has only recently become a reality for Hispanics. In many areas of this country, until very recently, the Hispanic community's efforts to vote or to register to vote were diminished because of a sense of powerlessness. This sense of powerlessness was created by the inability to succeed at the polls, as well as by the existence of formidable barriers to registration. See, Graves v. Barnes, 343 F.Supp. 704 (W.D. Tex. 1972).

Where the rules have been changed by reformation of the electoral system, the interest of the Hispanic community in participation has grown. We are, however, up against a mishmash of regulations that impede our community from reaching the stage of becoming "privileged" voters, i.e. registered.

There are no two states in this country that have identical regulations for voter registration. In many states, the application of state regulations varies from county to county. The regulations in the states where Hispanics are predominantly concentrated vary wildly from what some might term as fairly "progressive" regulations in California, to severely "oppressive" regulations in New Mexico. With the exception of Texas and Arizona, the states where Hispanics are concentrated are covered only minimally or not at all by Section 5 of the Voting Rights Act. This means the remaining states are relatively free to increase voter registration regulation without fear of federal response or oversight.

Section 5 has prevented the state of Texas and Arizona from increasing regulation of voter registration. In 1975, MALDEF filed the Flowers v. Wiley lawsuit under Section 5 against the State of Texas to prevent implementation of a new law that would have put into effect a state-wide purge with preregistration requirements for eligibility to vote. In 1987, MALDEF and other groups, through the Section 5 process, prevented the State of Arizona from implementing a similar state-wide purge. The retroactive regulation would have eliminated from the registration rolls newly registered voters, many of whom were Hispanic.

The state of New Mexico which has a very large Hispanic and American Indian population is not covered by Section 5. Thus, increased barriers to registration adopted in 1979 were not subject to federal review. With an already formidable series of regulations for voter registration which has impacted severely on low-income and minority registration New Mexico changed its four year purge for non-voting to a two year purge for non-voting. To register in New Mexico, one has to fill out an affidavit in person before a deputy registrar or the county clerk who must then sign as having witnessed the affidavit. Affidavits must be returned to the county clerk by the deputy registrar in person. Registration sites are limited to registration offices, schools, banks, special sites selected by the county clerk and before deputy registrars. Until 1987, the cut-off period for registration before election was 42 days, the third longest in

the nation. It is now 28 days. New Mexico county clerks have full discretion to accept or reject voter registration affidavits.

State officials assert that this system, particularly the purge, provides for the integrity of the New Mexico election process. In fact, the system is and has been subject to incredible abuses by those officials responsible for registering voters. In two counties with large Hispanic populations, Chaves and Bernalillo, for example, the county clerks have as recently as 1988 rejected voter registration affidavits for technical violations of regulations, such as use of blue rather than black ink to complete the forms.

In late 1984, MALDEF, representing members of the Hispanic community, filed Section 2 of the Voting Rights Act lawsuits against Chaves County, New Mexico, Roswell Public School District and the City of Roswell, challenging the at-large systems of election. As a result of those lawsuits, the Hispanic community now has representation on the governing bodies of those jurisdictions. However, the representation is not reflective of the real potential of the Hispanic community because of the constant struggle to maintain a registered voter population.

An active Hispanic political organization exists in Chaves County. Every major election year, with the assistance of the Southwest Voter Registration and Education Project, a voter registration drive is conducted by members of the Hispanic political organization. However, according to community

activists Frank Sanchez and Christi Brito of Roswell, all the man hours and money put into those drives only succeed in maintaining the status quo. In 1983, the three judge panel in Sanchez v. King, the 1982 legislative redistricting case in New Mexico, found Hispanic registration in Chaves County one of the most depressed in the state. The reason for the lack of increase is the combination of anachronistic voter registration regulations and the two year purge for nonvoting.

New Mexico voter registration laws have created a nightmare for voter registration of Hispanics in Chaves County like those horrifying dreams of being chased, wanting and trying to run at enormous speeds, but unable to pull your legs away from a ground that seems to be trying to suck you under.

The New Mexico voter registration laws place almost total discretion for interpretation and administration in the hands of the local county clerks. Registration which is by affidavit must be in person, either before the County Clerk or a deputized registrar who act as witnesses to the registration. Affidavits can only be obtained from the county clerk. Although anyone can be deputized, a person desiring to become a deputy registrar must apply to the county clerk who can then determine whether or not to deputize.

In Chaves County, Hispanics who have applied to become deputized for voter registration drives have been refused by the county clerk. The county clerk, on her volition, determined that single-member districts in the county should have a limited

number of registrars deputized. That number was determined by a per capita formula she established using the number of people who actually voted in that district in the last election. Based on that formula, the county clerk determined that the east side district of the County, which is heavily minority populated, should be limited in the number of deputy registrars to far fewer than the other districts in the County. Thus, the district with the greatest need for registration was relegated the fewest number of registrars.

The Chaves County clerk has refused to distribute more than 10 affidavits at one time to Hispanic deputy registrars and has refused to provide additional requested affidavits to Hispanic deputy registrars until a numbered series of affidavits previously provided were returned to the county clerk's office. The County clerk has refused to conduct schools for deputy registrars whom she knew would be registering voters in the minority community. However, she conducts several schools for registrars who work in the predominantly Anglo community. The County clerk has consistently rejected affidavits of registration submitted by minority registrars for technical omissions or errors, such as use of blue rather than black ink. The Chaves County clerk recently refused to register an older Hispanic who presented himself in person at the clerk's office. Her reason for refusing to register this man, who had driven many miles from the small farming community of Dexter, was because he spoke only Spanish. Thus, she would not verify his affidavit.

Additionally, the Chaves County clerk has determined that the affidavit of every Spanish surname registrant shall be processed through immigration to verify their citizenship before the affidavit is accepted as valid. This processing is not required under state law, is not applied to every person in Chaves County who attempts to register to vote, and introduces an additional period of delay in the processing of voter registration affidavits for Hispanic registrants, as well as another "barrier" because of the additional scrutiny.

Similarly, in neighboring Colorado, the voter registration process is an "in person" registration. Persons may be registered only by deputy registrars or the municipal or county clerk at registration offices or at the driver's license office. Unlike New Mexico, there are no "volunteers" deputized and registration is limited to designated sites. Therefore, door-to-door voter registration drives like those grassroots efforts successfully organized for Hispanic registration in other states, are not possible in Colorado. Very much like New Mexico, these voter registration regulations are subject to abuse by the officials responsible for conducting voter registration.

In 1976 in Saguache County, a small southern rural Colorado county with a 50% Hispanic population, the County clerk established four branch voter registration sites throughout the County. All of the branch registration sites were established in Anglo homes, with Anglo deputy registrars. None were established in Hispanic homes, even in the town of Center which has a greater

than 60% Hispanic population. No Spanish speaking persons were employed for any of the registration sites. Only one Spanish speaking person was "on call" for one registration site.[2/]

These abuses by the Saguache County clerk occurred in response to recent gains by the Hispanic population in representation on the Center city council and its organization in the school district seeking bilingual education for Hispanic children. The result severely limited registration for the Hispanic population in Saguache in a critical election year.

Once registered, Hispanics then must face the difficulty in staying on registration rolls. States with large Hispanic populations, Arizona, Colorado, and New Mexico, purge voters for not voting. New York, Illinois and Florida, have automatic periodic purges. Texas and California, have address verifications which result in purging of voters whose residence is not verified. Again, the impact on minority voters is the continuation of an historical disenfranchisement.

New Mexico's mandated two year purge for failure to vote continues to have an adverse effect on Hispanic registration. For example, in 1988, the Hispanic community registered 1,400 new voters in Chaves County. However, 2,000 registered voters did

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[2] Report of the Attorney General on Inspection of Saguache County Election Materials, July 1, 1977. The complaints which served as the basis of this investigation were ultimately referred to the Department of Justice. Saguache County at-large election system is the subject of the first Section 2 of the Voting Rights Act lawsuit filed in Colorado by MALDEF.

not vote in the 1988 general election and may be purged from the registration roles in June of this year. The state law requires that the registration of persons who failed to vote be suspended for sixty days, and that notice be sent by mail to the voter. After sixty days, the affidavit of registration is cancelled unless the voter affirmatively notifies the board of registration in writing that: 1) he still maintains his residence as stated in his affidavit; 2) he did in fact vote in the last general or primary election; or 3) he has moved and wishes to change his address.

Notices mailed in Chaves County in the past have been in English only. The impact has been that Hispanic voters, not literate in English, have been purged. Additionally, Hispanics who were only recently registered have been purged because they have not developed the behavior of voting required to maintain inclusion in the political process.

The triggering of a purge by the behavior of not voting impacts severely on a community that has only recently begun to learn about and to participate in political process.e only A study conducted by Dr. David Montejano and Dr. Chris Sierra of the University of New Mexico analyzing the impact of the 1987 purge in New Mexico, concluded that the purge indeed impacts most severely on persons only recently introduced to the electoral process and persons of lower socio-economic status. Of the 2,000 persons registered by the Albuquerque Voter Registration and Education Project in 1985, 61% of those newly registered voters

were purged as opposed to the overall Bernalillo County rate of 25.4%. Additionally, comparison of precincts by median income level and poverty level showed the poorest precincts, which were on an average 70% Hispanic, were purged at a rate of 35% while high income precincts, with about a 23% Hispanic population, were purged at a rate of 26%.

The address verification process, used in Texas and California, while appearing innocuous and uniform on its face, again has a de facto discriminatory impact on minority voters who are generally of a lower socio economic status than majority voters. Minorities, because they are generally poorer than the majority population, are less likely to be home owners and are more likely to be mobile, moving more frequently. Address verification processes along with the place of residence requirement in voter registration regulations serve to elevate the residence of a person to the status of an eligibility requirement like citizenship and age.

The Texas address verification process requires a new registration certificate be mailed to all voters in January of even numbered years. The certificate is not forwardable. Voters whose certificates are returned as undeliverable are designated on the voter registration roles. Those voters may continue to vote in local and primary elections and are not purged until August of the same year. However, voting in local and primary elections does not automatically verify an address. Persons may vote in the April primary and May local elections, but find

themselves purged when they attempt to vote in November. In fact, this kind of problem occurs with regularity in Texas.

Generally, the response to such a problem is for the election official to require the voter sign an affidavit swearing he or she is a resident of the precinct and a registered voter. However, in 1988, the Secretary of State for Texas attempted to institute new rules for the challenge and verification process for voters. Under the rules, if a voter appeared at the polls without a new certificate and did not appear on the list of registered voters, the election judge would have been required to contact directly the County Clerk to verify the voter's registration. If the voter chose to vote by affidavit, the Secretary of State required officials to warn of criminal penalties for false swearing. In addition, the Secretary of State directed his appointed state inspectors to be present at certain polling places to report on voting activity and to seek assistance of law enforcement officers. The State inspectors were placed almost exclusively in polling places or counties that were predominantly Hispanic and black.

The effect of the address verification process in Texas, in conjunction with the attempted official ballot security program instituted by the Secretary of State, could have had an unprecedented chilling effect on minority voters in Texas. In fact, the United States Assistant Attorney General in each district in Texas, in cooperation with the Secretary's "anti-voter fraud" program, had pledged to prosecute to the fullest

extent of the law each and every effort to" fraudulently" vote. MALDEF intervened with litigation and halted the proposed unprecleared election activity directed at minority voters only seven days before election. The innocuous address verification process in Texas almost resulted in a great disaster for minority voters in Texas in 1988.

The registration deadline continues to have a particularly burdensome impact on Hispanic voters. Of the seven states (Texas, New Mexico, Arizona, California, Colorado, New York, and Florida) with greater than 10% Hispanic population, all have deadlines for registration prior to elections approaching 30 days or longer. New York has a deadline prior to election for registration of 60 days. Arizona requires that a person be registered 50 days prior to the election. Texas and Florida have 30 days deadlines. New Mexico has a 28 day deadline. California has a 29 day deadline and Colorado a 25 day deadline. Registration and participation levels for Hispanics in these states when compared to general registration and participation levels in states with shorter deadlines seems to support those studies that assert that longer periods of time between registration and eligibility dampens voter participation. The average registration rate for Hispanics in these seven states is 41.8% and the average level of participation at 34.6%. Yet, in the states with registration deadlines of 15 days or less, the average registration rate is 74.0% and the average level of participation is 64.1%. Clearly as an election day approaches,

enthusiasm levels increase, thus participation levels also increase. Where a lengthy time lag is imposed between required registration and the conduct of election, many potential voters are lost because they cannot register.

While long waiting periods between registration and election day seem to impact Hispanics more severely than other populations (e.g., New York - 60 day deadline, 60% registration rate overall, only 32.6% Hispanic registration rate) the general population seems also to participate at much higher levels when deadlines between registration and election dates are short. For instance, in the three states with election day registration (Minnesota, Maine & Wisconsin) the average registration rate is 81.2%. The average turn out in those three states is 68.9%. In the three states with the longest deadlines between registration and election day (New York, Arizona and Virginia) the average registration rate is 63.3% and the average turn out rate is 55.3%. The states with the longest waiting periods, New York and Arizona also happen to have significant Hispanic populations.

Although Hispanics in the United States are making progress in some areas of political process, our voter registration levels have declined to the lowest point since registration for Hispanics began to be measured in 1972. By comparison, our population has increased dramatically over the past twenty years. Only in Florida and Arizona have Hispanic registration rates and participation levels increased by any measurable amount since

1984. In Texas, levels have remained constant; but, in California, Colorado, New Mexico, New York and Illinois, we have seen a dramatic drop in both registration and participation since 1984.

For Hispanics there will never be equal access to the political process, no matter how many election structures we succeed in changing, if our ability to register and to develop our political behavior is frustrated. While registration and participation has declined for all voters, the critical aspect of the impact on Hispanics of the decline is that we are novices in the process and cannot afford the diminution of a power we are just beginning to learn to use.

I hope I have succeeded in illustrating for you today, many of the varying administrative voter registration regulations in our fifty states that have a de facto discriminatory impact on Hispanics. There must be a change. Clearly history demonstrates that change is only forthcoming, as in the past, with federal intervention. Senate bill 675, Equal Access to Voting of 1989, is a necessary first step in the direction of that change. The introduction of Senate bill 675 demonstrates the concern of the federal government in the plight of the minority community's struggle for access. That the bill is enjoying broad support gives the Hispanic community renewed hope that the problems we are facing throughout the country will be remedied.

Senate bill 675 establishes considerable incentives for

states with the most restrictive systems of registration to adopt less burdensome systems that range from registration by mail to same day registration. The bill has a carrot and stick approach that may prove exceedingly effective for states which been reluctant in the past to adopt reform. The provision of funds by the federal government to the states to assist in reformation may entice many targeted states to move ahead. Moreover, the bill establishes a cause of action that may be pursued by the U.S. Attorney General or a private person seeking to cause entrenched states to move ahead.

The issue is both a civil rights issue and an electoral reform issue. For Hispanics, elimination of barriers to registration would provide a more equal opportunity to engage in the voting process. Registration reform is also beneficial to our representative form of government. To rid our process of obstacles to registration encourages all eligible voters to participate. MALDEF supports Senate bill 675 as a necessay first step in reforming our registration laws to conform to the Civil Rights legislation of the last twenty-five years.

Senator SIMON. Now I believe Reverend Jackson is here, if someone can notify him.

We are very pleased to have Rev. Jesse Jackson, whom I have known for about 30 years, who has been on the forefront of this fight for voter registration as well as on the forefront of the fight for the less fortunate in our country. It is an honor to have you here.

I think, Senator Kennedy, you wanted to add a word here.

Senator KENNEDY. Well, when it comes to voter registration, Mr. Chairman, no one does it better than the Rev. Jesse Jackson. We all are impressed by what he has done in terms of the registration campaign, as well as many other areas of public policy.

I will just limit my questions to the questions on registration today, Reverend Jackson, but should we be saying, "Welcome, Mr. Mayor?"

Reverend Jackson. The speaker is out of order, Mr. Chairman.

Senator KENNEDY. Thank you.

Senator SIMON. Senator Specter.

Senator SPECTER. Mr. Chairman, permit me to make the welcome bipartisan.

Senator SIMON. Reverend Jackson, we are pleased to have you here and look forward to hearing your testimony now.

STATEMENT OF REV. JESSE L. JACKSON, EXECUTIVE DIRECTOR, RAINBOW COALITION, CHICAGO, IL

Reverend JACKSON. Chairman Simon, Senators Kennedy and Specter, members of the Judiciary Committee's Subcommittee on the Constitution, let me express my thanks to each of you for the opportunity to address the committee today and to assist you in your efforts to develop a comprehensive voter reform bill.

In some sense this is the full circle for me, because 24 years ago I sat in a room with Dr. King, who was on the telephone talking with at that time Attorney General Robert Kennedy about barriers to voter registration. At that time the argument was, everybody should have the right to vote but they had to have a twelfth grade literacy level or memorize the Constitution or determine the number of bubbles in a bar of soap, but beyond that, everybody had the right to vote if they had the will to do so.

So here we are 24 years later, back at Selma, AL, all over again, discussing well-constructed barriers to voter participation. There ought to be some sense of shame attached to the fact that voter turnouts in Nicaragua, Panama, Taiwan, and The Bahamas are substantially higher than voter turnout in our own country. In part, I might add, in Taiwan when you are aged 20 you are automatically a registered voter. Even in those fledgling and developing democracies, they have made a judgment to remove the barriers to voter registration.

My comments today will address a small portion of the numerous barriers that stand between our Nation and full citizenship participation. Through the course of the subcommittee's deliberations, I am certain that you will hear a wide range of opinions and statistics on why our voter registration laws are inadequate as they currently exist. However, first and foremost in this apparent rush to

reform, we must be careful not to reconstruct new Federal regulations that may further dilute the voting strength of the most disenfranchised.

The challenge of dismantling the systems that have deliberately diluted voting strength throughout our history is a monumental task. It is a task that must be measured by, one, its effectiveness in enfranchising the disenfranchised and, two, how it adds to the voter registration rolls rather than how it subtracts from them.

My experiences in voter registration, in drives across the country, are derived from over two decades of conducting hands-on voter registration campaigns all over our Nation. Through our 1983 Southern Crusade we were able to register 2 million new voters. Throughout our crusades, we encountered a number of barriers that blocked our ability to enfranchise even more African-Americans and women and workers and Hispanics and low-income voters.

I have found that voting and registration requirements and the ways they are interpreted circumvent the spirit of the voting rights act and often prevent millions of citizens from voting. State-by-State, we found ourselves strangled by a number of barriers, including inaccessible registrars, massive purging for nonvoting, discriminatory mail confirmation purges, intimidating ballot integrity challenges, and prohibitions against on-campus student registration.

I would like to give a brief account of abuses that we have encountered in each of these categories. These examples will hopefully give the committee a better sense of the type of legislation that will be necessary to overcome these barriers.

In 1987, as the result of a lawsuit brought by Operation PUSH and the Lawyers' Committee for Civil Rights Under Law, the Federal district court ruled that Mississippi's registration laws were discriminatory because of the restrictions they placed on registration. However, election officials refused to move forward to eliminate unwarranted restrictions on time and place of registration and to maintain accessible registration throughout the State.

Like most other States, Georgia purges voters every 3 years for nonvoting. This means a voter can vote every Presidential election and still be purged if he or she doesn't vote inbetween. This frequent purging for nonvoting system almost means that almost all the registration done is simply to catch up, to re-register those purged, rather than to expand the electorate and reach new voters.

In Atlanta, for example, 25,000 people were purged in the year prior to the 1988 primary. Approximately the same number were registered in numerous registration efforts in congressional district 5, for a net gain of zero.

No other rights guaranteed to Americans are bound to the constant exercise of that right. If a wage earner refuses to file taxes over the course of two Presidential campaigns, we do not purge them of their responsibility to pay their unpaid taxes. Certainly the right to vote cannot be held in any lower regard than the responsibility to pay taxes. Purging for nonvoting is fundamentally and morally wrong and should be removed as a practice in our political system.

Through the course of our Georgia voter registration campaign in 1984, we were able to inspire 8,000 people at a rally one night, and 800 students at Paine College in Augusta, GA, to come forward to register.

I remember distinctly the night that we had 8,000 in the auditorium in Augusta, GA. Half of the audience, plus, half of the people were unregistered. The voter registration office closed at 6:30. They would not keep it open an extra hour. They would not let us pay overtime for registrars. They would not let us use deputy registrars, so literally thousands of people, based upon inaccessible registrars, were not registered to vote on that night.

At this point of heightened awareness and commitment, we were not able to conduct any registration because of the refusal of local election officials to conduct any on-site registration. Even our attempts to pay the deputy registrars overtime were rejected. The reasons cited were that our site, a college campus, had not been approved by the election officials and had not been publicized 2 weeks in advance. Door-to-door registration of the students after the fact was not even allowed.

This situation clearly demonstrates the need for uniform standards to be set which prevent local or statewide officials from constraining the registration of voters.

In New Hampshire last year, 2,000 students, unregistered, gathered and rallied. We could not get a deputy registrar to come to the University of New Hampshire. We had to march 6 miles down the road to register those students to vote, at which time they were challenged about the validity of their status in that State. It was a constant discouraging process for student involvement.

We need more provisions which will allow colleges and high schools to be used as registration centers which can help register an additional 13 million unregistered voters between the ages of 18 and 24. There simply is no reason why every May and June, 3.5 million high school students should not come across that stage with a diploma in one hand symbolizing knowledge and wisdom, and a voter card in the other hand symbolizing power and responsibility. After 12 years of public education, and singing The Star Spangled Banner and saluting the flag and pledging allegiance, we ought to have students who are voter-literate at age 18.

One of my greatest concerns is the problem of mail confirmation programs or ballot security measures. In Mississippi huge purges were planned in many parts of the State, following 1986 State legislation to purge the rolls every 4 years. The Justice Department acted to prevent these purges based on the preclearance provisions of the Voting Rights Act.

However, Washington County's purge was authorized to continue. The entire population of the county was sent letters instructing them to re-register because of redistricting which would change districts and polling places; 14,000 letters were returned based on unforwardable addresses, and all of those people were automatically dropped from the rolls.

As we move into the 1990's and prepare for the redistricting process, we must protect innocent voters from becoming pawns in the political maneuvering that is about to take place. Washington County is approximately 56 percent black. It has the second largest

African-American population in the State and the largest in that congressional district. The Washington County, as hundreds more like it, can only be addressed by Federal legislation which keeps lists accurate but prevents the unjust removal of millions of registered voters from the rolls.

In New York City, 289,000 registered voters were purged from the city voter registration rolls prior to the 1988 primaries, due to biased change-of-address verification procedures. Some people received notification of the purge in January or February, too late to re-register with New York's 60-day primary registration deadline.

Local voter registration activists reported that 151,000 were purged for failure to vote for 4 years, 137,000 for moving. Nonforwardable postcards were returned. Election officials acknowledged that approximately 50,000 of the latter group were incorrectly purged because of incorrect address information.

New York City is noted for problems with postcards with incomplete address information, which can easily get lost in huge apartment buildings and projects, another problem with the method of sending postcards. In fact, Mayor Koch was once dropped from the rolls when his postcard was sent to his Village address and was not forwarded to Gracie Mansion. The Mayor was quickly reinstated. Many other residents of New York have not been so lucky.

What all of these examples demonstrate is that despite the Voting Rights Act, despite the threats of Federal injunctions, despite the political ramifications of exposure, voting rights of American citizens are being denied every day. It is not a case of a few isolated incidents that can be solved by the filing of lawsuits or the reinstitution of a purged voter's name through a more computerized process. This is a case where affirmative Federal action is needed to address a cancer which is literally destroying our democracy from within.

I am inclined to support a bill which has as its centerpiece postcard, mail-in, and multiple automatic agency-based registration. Such a bill should include a clause for no purges for nonvoting and a provision for phasing in same-day, onsite registration, once the other reforms have had adequate time for implementation. I cannot support any bill which has mandatory mail verification provisions which can and will be used to make legal many of the unjust schemes which have been devised in the past to dilute African-American and Hispanic voting strength.

As I said from the onset, we must ensure that we are devising legislation which speaks to the needs of those who have had the lowest level of participation—low income, African-American, Hispanic, young, and rural voters. In our quest for bipartisan support for this bill, we must not substitute one form of injustice with another. The United States does not need a bill which opens up methods of registration in the front door, while setting a trap door for the very victims of the old system who were once locked out.

We need comprehensive voter reform legislation, and I hope that the U.S. Senate can join with the advocates in the House to promote a bill that is true reform.

Thank you very much.

Senator SIMON. Thank you very much, Reverend Jackson.

I don't know if you have had a chance to look at the bill that we have presented here, but if you have or if your staff has, does that in general meet the standards you are talking about?

Reverend JACKSON. Well, some of the threatening provisions—I read so many different versions—are the 2-year purging process. That is just a process of control and manipulation. Registrars tend to run rolls up for their purposes or run them down for their purposes, because they know that an organized minority is a political majority, and the 2-year roll purging process concentrates power in a most unfair and ugly way, for example.

Second, Senator, we should not be afraid to deal with onsite, same-day registration in this age of computerization and high technology. If you leave here right now and get a traffic ticket, while they are writing the ticket, within 5 minutes any ticket that you ever had before and didn't pay it, or if it is a stolen car or the wrong license plate, within 5 minutes you will know all of that information.

If we can set that kind of system up to chase down traffic tickets and stolen automobiles, why can't we have a system that is that modern for the most basic right in our system, the right to vote? Sixty-day closing of the books? Thirty-day closing of the books, when we know full well that most people are inspired to get involved 15 days or fewer before the election, because that is when the advertising starts? These are trap doors to undercut the intent of the 1965 Voting Rights Act.

Senator SIMON. When you said in your statement that we are violating the spirit of the Voting Rights Act, is the pattern you see one that particularly discourages minorities and young people from voting?

Reverend JACKSON. Young people to the extent that on our college campuses, I recall one of the drives led by Senator Kennedy after the 1965 Voting Rights Act was access for students to register and vote. There was a great fear that if students ever had the right to vote, that their energy and their numbers could change the face of local and State politics, so there was great resistance to their being able to declare residency and vote where they live, and they live where they go to school for that period of time.

We finally got it passed, but now the lack of deputy registrars at these schools, the challenging of their residency, these are new traps to simply discourage participation. I saw it most vividly at the University of New Hampshire. We saw it at the University of Iowa as well, so it does have a negative impact upon students' involvement.

Second, in urban America, given the construction of high rises, the mail campaign does not address how mobile people are, how often people move, and second the illiteracy rate. If you are sending mail to people who are functionally illiterate, or registering people to vote with cars who don't have cars, those are more trap doors.

Senator SIMON. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Reverend Jackson, the objectives you articulate are ones which we are trying to achieve, and when you talk about the problems on

registration limitations, and about strike-offs and about the unavailability to students, we understand that.

The concerns which I have turn on factors of same-day registration and turn on factors of fraud in a very highly sophisticated context. When you talk about computerization to do the kinds of checking that you call for, we may be there one day. I frankly doubt that we are there at the present time.

When I was district attorney in Philadelphia, in the 1972 election we had a highly sophisticated fraudulent program set up where an injunction was issued to keep the McGovern watchers out of south Philadelphia. Implicated in the scheme were a State court common pleas judge and ranking political leaders.

Under our system only the election court had jurisdiction, under specifically designated judges, but that was violated. This is documented in a criminal complaint which was filed where, in a very carefully calculated plan, an injunction was issued and all the McGovern watchers in a section of Philadelphia, concentrated in south Philadelphia, were kept away from the polls until about noontime, some 5 hours after the polls had opened.

That is one of the most sophisticated schemes which I have seen, but there are many schemes in effect which are not designed to move against the people that you describe, but designed to move against legitimate voting processes for fraud. That is why I have some very substantial reservations about same-day registration, and that is why I am concerned about one of the statements which you made, that you could not support a bill which provided for mail verification.

Let me start with the same-day registration. Would you think that the objectives which you seek and the sponsors of this legislation seek could be obtained short of same-day registration, perhaps cutting back on the 60- or 30-day requirements to something closer to election day?

Reverend JACKSON. Well, first of all I think that the fear of fraud should not motivate us to strip the freedom of the mass of the American people. People who circumvent the law, who concoct massive schemes, we must never give up on making them the dormitory mates of Ollie North. People who circumvent the law in America must face the consequences of circumventing the law.

If there are some registrars or some judges or others here and there who choose to violate the right to vote, they must suffer the consequences of that kind of political terrorism at the ballot, so I think that we should intimidate them, rather than allow them to intimidate us. I would say let us aggressively move on those forces that would do a disservice and bring disgrace to our process.

Second, we should be at least as confident in the integrity of the American people as the Taiwanese Government is in the integrity of their people. The fact is, Senator Specter, at age 20 they are automatically registered.

Why does that stick out in my mind? A few years ago, when our last child was born, we had expected a boy. You know, we programmed ourselves for a boy, but it was a girl. After the first 2 days we hadn't come up with a name. The third day we finally said, "We will name that baby Jackie." The doctor said, "Well, take the baby's name downtown to put it by the baby's number.

The baby has been registered." An American citizen, born in Cook County and in Chicago—registration without effort at birth.

My father died 9 years ago, and through all of that trauma, filling out insurance blanks, and the burial and all of that, the funeral director said, "But before we can bury him, sign the death certificate."

Birth date—death date—automatic registration. We know everybody who is age 18 between birth and death. We ought to really go beyond even the pain and the price of registration in the first place, and so any of these methods that tend to put more burden on the people and off of the State, I tend to reject because they are restrictive.

Senator SIMON. Well, Reverend Jackson, there are two problems with tough enforcement of the law. One is that you can't undo the damage done on election day. The example I gave you, where the McGovern watchers were kept from the polls, there was no way to rectify that. It is not realistic to have another election day.

The second problem is that punishing the perpetrators is extremely difficult to do. There is less deterrence for those who engage in vote fraud—and that is on both sides—because of the imperfections of the judicial system, and that is why I have some pause.

But let me come back to the central——

Reverend JACKSON. I must say in Chicago, which, as you know, is noted for open, free, and fair elections——

Senator SPECTER. Second only to Philadelphia. [Laughter.]

Reverend JACKSON. I understand. Some people had to spend some time thinking about that in jail, and those are better elections now. I mean, the price that you pay for tampering at those polls on election day is so great, it is worth more than what you get paid to be an election judge. We upped the price on that.

I am simply saying that we shouldn't even use a Chicago-Philadelphia example to discourage people in New Hampshire and Wyoming. What is about to happen, if we are not careful, is that we will use a process of some of the worst examples and spread despair on everybody else, as opposed to taking the hope and spreading it on the places where there is darkness.

Senator SIMON. Reverend Jackson, let me come back to the question about how integral do you see same-day registration. Do you think that the substantial objectives that we seek could be attained without that?

Reverend JACKSON. Well, same-day registration or near-day registration. Clearly 60 days is before most campaigns really start. Thirty days is before most of the move into any form of advertising about who is running and what the stakes are. Even 2 weeks—really, a week is enough. I mean, I mean, the registered voters are on the rolls. The unregistered voters are also documented, and so it is computerized. It is not manual, so to speak, so either same-day registration or near same-day registration are steps in the right direction.

But again, the purging process, I must keep coming back to that because the purging process is a real vicious form of control. You kind of purge your adversaries and kind of reinforce your allies in that process.

Senator SIMON. Well, Reverend Jackson, I agree with you about the purging process. I am pleased to hear you talk about near-day registration because that is a principal concern which I have had. I think if we can come to terms on something like near-day, as you articulated, I think we may well find common ground here.

Reverend JACKSON. I would certainly hope, on this common ground thrust, that we will look at those States where they have same-day registration and give them their day in court, so to speak, to explain how they have worked out these problems, places like Minnesota where they in fact have same-day registration. I would hope that in the mix, as we look at some bad examples in some urban areas—and some rural areas, for that matter—we will also balance that off with those States that have onsite, same-day registration, to put their experiences in the mix.

Senator SPECTER. Well, I see my time is almost up. We certainly will take a close look at it but, as I say, I am pleased to hear your statement about near-day registration because I think we can work out an accommodation on that line. Thank you very much.

Reverend JACKSON. Thank you, Senator.

Senator SPECTER. Thank you, Mr. Chairman.

Senator SIMON. Senator Kennedy.

Senator KENNEDY. Thank you very much, Mr. Chairman.

I think there is a good deal of talk of the possibilities and the past records of election fraud. At least in my study of this issue—and we have been dealing with the issue of the right to vote for a long period of time, and working with you, Reverend Jackson, on that—the real fraud is not so much individual fraud but political organization fraud, a rather different form of animal that we are talking about.

We hear, "Well, we don't want to have same-day because then it is going to really undermine the whole election process, because people are going to be running all over town." That certainly hasn't been the case. In the most elections, Reverend Jackson, as you probably know, the three States that have same-day registration this last year and one State that has no registration are four of the top five States in turnout and not a single incident, at least that I know about, of allegation of fraud in those areas. I think that is pretty powerful.

But you don't have to get there, although I certainly favor it. I think that we can either move closer in terms of date or try to use automobile licenses or multiple agencies or mail, and I think you have made a very powerful case about how we have been trying to eliminate many of the barriers—the poll tax, voting age, the other kinds, the literacy tests, the whole range of ones in your testimony—but still these remain out here.

As I understand your message, registration procedures are serving as the kind of barrier, even today, that we were trying to overcome with the Voting Rights Act of 25 years ago. I think you make a very powerful case, and that I think reminds us of what our responsibilities are.

But the purging issue is one which I think needs special attention, and I welcome the fact that you commented on it. You see the situation where they send mail to an individual who is registered because they didn't vote, it is nonforwardable, and then they would

send—under at least one proposal—an additional postcard to indicate that this individual better come down or they are going to be purged.

Well, we know and you must know of a number of things, and one is that many people who are registered don't vote as a matter of civil protest. As a matter of civil protest, that happens. It certainly happens in my State. They may do it for one election, two elections, but they are still believers in this system.

There are certainly ways, I imagine, where you could make sure, if there was some reason to believe that a person didn't vote a certain number of times, that you could ensure that when they did come back and vote, that they were going to at least indicate that they still lived in that same residence. There are other ways of dealing with what might be, in some instances, an occasion of some abuse.

But I understand, from what you are saying here, any legislation that is approved by the Congress and the Senate—and I am interested in your response—that has a purging mechanism of the voting list based upon missing one election, through mail and even subsequent notification, you would not support it. Do I understand that correctly?

Reverend JACKSON. Absolutely would not support, because that is a form of systemic fraud. I mean, the fundamental issue in elections I have been involved in around the country, voter fraud takes place in the form of stealing votes, and people who steal votes know they are breaking the law. We could not give them a pass for breaking the law. We must break them and protect the law. Broken machines, or opening polling places late, or not getting polls to where seniors are or where indigent people are, or not getting to where people are in the hospital and the like, that is a form of voter fraud. Those are forms, and purging.

The real challenge in the country is voter motivation and voter access. We do not have people standing in great lines trying to vote twice. We have a problem trying to get people to vote once. Voting twice is not the big issue. You have some of that, but that is minimal as compared to getting people to vote one time.

Senator KENNEDY. Well, I am just glad you spoke to that. That isn't really a hypothetical, as you are very familiar with the example I gave you, because that is certainly under consideration in the House of Representatives, that proposal. They have moved along on that measure, and it is certainly one that having your position, Antonia Hernandez' position, and those that are here and speak to it, I think it is enormously helpful.

I want to thank you for taking the time. As I said earlier, you have spent a good deal of time on this issue, not only 25 years ago but in the intervening time, in terms of getting people involved in the political process. I think you have made a very major contribution to that effort, and we certainly have appreciated your comments here today.

Reverend JACKSON. Senator Kennedy, I must further share my disposition: Either we are going to get justice inside the system and the process or be forced back into the streets, but our spirit will not be broken.

I remember so well when Dr. King got the Nobel Peace Prize. He came back and President Johnson had a reception at the East Room of the White House, and he expressed his thanks and appreciation and then said, "But, President Johnson, I really must get for the people the right to vote."

President Johnson said, "Really, I support you very much, Dr. King, but the Congress is too conservative. We cannot get the right to vote."

Dr. King said, "For veterans of foreign wars?"

He said, "Well, you know, we can't get it. For blacks, we can't get it."

And he was a man who had the power to push a button and destroy the world, or to change the course of ships or planes in their flight, all that power, and yet could not guarantee citizens the right to vote. So we had to go outside the Democratic and Republican Parties and go to the streets in Selma, AL.

This right to vote did not come out of the Congress in a bunch of compromise schemes by people trying to protect their districts. It came from the scattered brains of Allie Luitso on Highway 80 in Alabama, who was called "nigger lover" when she fought for the right to vote, and her brains were blown out at point-blank range.

This right to vote came from the deaths of Schwerner, Goodman, and Chaney, two Jews and an African-American who were bulldozed to death with their eyes wide open; or Jimmy Lee Jackson, a 15-year-old African-American youth shot in the back about the right to vote; or John Lewis, beaten to the point of a concussion trying to get across the bridge.

Even then, there were these schemes in the Congress to dilute the impact of the vote and deny access, and I submit to you that we would make a terrible mistake to surrender the gains we have made back in the hands of people who often are concerned more about perpetuation of their own limited political—small "p"—agenda than access to the right to vote.

I do not know why we have less access than people in Nicaragua or Panama or The Bahamas or Taiwan on this right to vote. I would rather us go to the floor and declare a principal position on access and lose the vote and save our self-respect, than to go offering some proposition that is beneath the dignity of the life and death of Dr. King and those who died to make the right to vote possible in the first place.

Senator SIMON. If I may just follow through with one more question, you know there has been a lot of discussion about fraud and same-day voting here. In many countries when you go to vote, you dip your index finger in a little bit of ink, and that lasts for 24 hours and you can't go and vote anywhere else. We would encourage everybody to register, but if people hadn't registered, if they wanted to voluntarily dip their finger in a little bit of ink so they can't go somewhere else and vote, does something like that make sense to you, or is it offensive?

Reverend JACKSON. Well, it wouldn't bother me, but some people would put that in the same category as a drug test or something and they would start reacting to a little bit of ink. The fact of the matter is, there are so many ways, if we have the will to access the right to vote and really want it to happen. There are many ways to

maximize access and minimize corruption. Shall we surrender to the corrupting forces or shall we fight for the liberty of those who want to be free and fair and open in the democratic process?

In the 1960's they used literacy as the threat of fraud. "How can illiterate people register and vote intelligently?" they asked. "How can those who cannot memorize the Constitution, or tell how many bubbles there are in a bar of soap?" Literacy was used as the lever of intimidation. It was considered a kind of racial fraud. Now we are using other names, new forms of voter denial, but they are just as pernicious and just as vicious and just as effective.

The sum total of it is, about 49 percent of the American people voted for the President. It should be a signal for those who care, and I submit to you that there are ways of determining how to access and increase people's options.

Senator KENNEDY. I would just mention, Reverend Jackson, I had the good opportunity last night to meet again Mrs. Goodman, the mother of the boy that was murdered in Mississippi. She is leading a pilgrimage to Washington, to arrive on June 23, in support of the registration bills and the kind of objective which you have outlined here and which I believe is incorporated in this legislation. You mentioned Goodman, Chaney, and Schwerner, and those families are still very much involved in that movement as well.

Reverend JACKSON. I am developing a growing sense that if we leave the right of voter registration access to the back room politics of whose name is going to be on top of the bill and who is going to perform on that floor, we may take a step behind 1965. I am rather convinced that we are going to end up in these streets again in a massive way, just for the right to vote, and voter access is a part of the right to vote. Students in New Hampshire should not have to march 6 miles for the right to vote and then be challenged about their citizenship.

If you lived in Sunflower County where Fannie Lou Hamer lived, right now, Senator Simon, to register you would have to go to the county seat, 45 miles and back, 90 miles round trip—motor-voter registration. If you were indigent or old or sick, you would have to depend upon somebody to get that for you.

When I look at the combination of schemes, we are legislated in and being regulated out. All these are very intentional schemes that take us right back to pre-1965, and I hope that we get enough votes in the Congress to make a progressive statement, to make America more accessible and to make America better. But if we can't, we are just morally obligated, in the name of all of those who marched, indeed those who marched and died for this right, to protect the integrity of their sacrifice by going to these streets again.

Senator SIMON. We thank you very, very much for your testimony.

We will take a 2-minute recess before we resume our hearing.

Senator KENNEDY. Oh, Mr. Chairman, Senator Biden was here. I just wanted to mention to Reverend Jackson and to Congresswoman Jordan, I think you saw Senator Biden here. He was very interested in both their testimonies and wanted to ask some questions. He has been asked by the majority leader to chair the Foreign Relations Committee, so he was unable to remain, but he wanted me to extend his best regards.

Thank you.

[Recess.]

Senator SIMON. The subcommittee will resume.

We will put the remaining panel members on one panel: Frank Parker, Althea Simmons, Brad Gahm, Dr. Arthur Flemming, Mr. William Brown, Bruce Fein, and Timothy O'Rourke. You may have to pull up an extra chair to get everybody there.

I might mention to the witnesses, we will use the 5-minute rule. I regret to impose that on you, but we are running into some time problems here. We will hear from all the witnesses and then we will have some questions.

Mr. Frank Parker is the director of the Voting Rights Project, Lawyers' Committee for Civil Rights Under Law. Mr. Parker, right over here.

STATEMENT OF FRANK R. PARKER, ESQ., DIRECTOR, VOTING RIGHTS PROJECT, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, WASHINGTON, DC

Mr. PARKER. Thank you, Mr. Chairman. I appreciate the opportunity to be here today.

I would like to address two particular issues that have arisen during the course of these hearings. The first issue was raised by the statement made that there was only scant evidence that voter registration laws deny voting rights.

I regret to inform the subcommittee that that statement was made by a distinguished gentleman from a State that has the third worst voter registration rate for black people in the country. According to 1988 census survey statistics, in Kentucky there is a white voter registration rate of 63 percent, 63.4 percent, and a black voter registration rate of only 45.8 percent, for a difference between white and black voter registration rates of 17.6 percentage points, which makes it the third worst in the country.

Second, the statement that the problems of voter registration relate to socioeconomic causes: I have extensive experience in this area, having filed a lawsuit in Mississippi that Reverend Jackson mentioned, Mississippi State Chapter of *Operation PUSH* v. *Allain*, which is the first lawsuit anywhere in the country in which a district court struck down statewide voter registration procedures under section 2 of the Voting Rights Act.

In the Mississippi case we were challenging two barriers to equal voter registration. One of them was Mississippi's dual registration requirement, that required voters to register twice before they were fully qualified, and the second one was the State law prohibition on satellite registration, that actually prohibited the county registrars from taking the books out of their offices to register people outside the county courthouse without the permission of the county board of registrars.

These two barriers that we were challenging in the Mississippi litigation are illustrative of the kind of barriers that exist in the country, the kinds of burdens that exist in the country on the right to vote. The district court in this case found that both of these barriers were adopted for a racially discriminatory purpose, that they

had a racially discriminatory effect, and that they violated section 2 of the Voting Rights Act of 1965.

We think that in Mississippi and other southern States that are covered by the Voting Rights Act, that the Voting Rights Act has made tremendous gains, and some people even think that there is no longer a problem. But the district court found in Mississippi that there was a tremendous disparity in voter registration between whites and blacks in the State. Despite the progress made under the Voting Rights Act, the district court found that only 54 percent of Mississippi's eligible black population was registered to vote, as compared with 79 percent of the State's eligible white population, and this was because of these barriers.

The requirements and restrictions of voter registration and socioeconomics really intersect at this point. Socioeconomic disparities are a cause of low registration because of the voter registration barriers that exist. They can't be separated, and this is illustrated by the Mississippi case.

In Mississippi, as in some other States, you had to go down to the county courthouse and register to vote. The district court found that this was a burden, particularly on hourly wage people, blue collar workers, and service workers who were more likely to work for an hourly wage and who, to take off to register to vote during the week when the offices were open from 9 to 5, would have to lose money, literally lose money. It was kind of a poll tax, to take off from work. They would lose money, being paid an hourly wage, in order to register to vote. The district court found that because blacks were disproportionately represented in blue collar and service worker positions, the requirement of going to the county courthouse and registering to vote had a racially discriminatory impact as well as a socioeconomic impact.

The other restriction had to do with the requirement to travel, people having to travel to the county courthouse to register to vote. This also had a racially discriminatory impact because in Mississippi—and we found that this is true of other southern States as well—the figures are that 27.8 percent of all of the black households, almost a third of all of the black households, had no motor vehicle at home available for household use, as compared with only 6.76 percent of all white families. So the lack of available transportation also had a discriminatory impact.

As a result of these barriers—and I have given the statistics in my testimony—according to the latest 1988 census survey, in 20 of the 28 States for which the Census Bureau reports white and black figures, black voter registration rates are lower than white registration rates by an average of almost 9 percentage points. These figures probably understate racial disparities in voter registration today because of over-reporting.

The current situation is probably much worse than these census statistics indicate for these 20 States, and in the 8 States for which the Census Bureau says that the black voter registration rates are not lower, they probably are because of over-reporting by blacks. In 1984 in our Mississippi case, the Census Bureau reported that black voter registration rates were higher than white registration rates, but we did a survey using validation from actual voter registration

rolls, and we found a 25 percentage point disparity between black and white voter registration rates.

Thank you, Mr. Chairman.

[Mr. Parker submitted the following material for the record:]

LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW

SUITE 400 • 1400 EYE STREET, NORTHWEST • WASHINGTON, D.C. 20005 • PHONE (202) 371-1212

CABLE ADDRESS: LAWCIV, WASHINGTON, D.C.
TELEX: 205662 SAP UR
FACSIMILE: (202) 842-3211

STATEMENT OF FRANK R. PARKER

DIRECTOR, VOTING RIGHTS PROJECT

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

on

Voter Registration Reform Legislation

before the

Subcommittee on the Constitution of the

Committee on the Judiciary

United States Senate

May 10, 1989

STATEMENT OF FRANK R. PARKER, DIRECTOR, VOTING RIGHTS PROJECT, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, WASHINGTON, D.C.

Mr. Chairman and members of the Subcommittee, I appreciate the invitation to appear here today in support of Federal legislation to remove existing barriers to voter registration.

BACKGROUND

The Lawyers' Committee for Civil Rights Under Law was organized in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal redress for civil rights violations. Since then the Lawyers' Committee has provided representation to minority citizens in hundreds of lawsuits seeking vindication of Federally-secured equal civil rights and has been instrumental in securing effective legislation to protect those rights, including the right to vote.

I am Director of the Lawyers' Committee's Voting Rights Project, which is a national litigation project committed to protecting the equal voting rights of minority voters. I have been writing about voting rights and litigating voting rights cases for more than 20 years. I have published articles on voting rights cases in the Supreme Court in the American Bar Association's publication, Preview of United States Supreme Court Cases, I wrote a chapter in the book, Minority Vote Dilution, published by Howard University Press in 1984, and I have written five law review articles on voting rights issues. As an attorney with the United States Commission on Civil Rights in 1968, I was the principal staff writer for the Commission's report, Political Participation, that described the implementation of the Voting

Rights Act of 1965 and which demonstrated the need for the extension of the Voting Rights Act in 1970. My new book on the impact of the Voting Rights Act in Mississippi is scheduled to be published next spring by the University of North Carolina Press.

In addition, as a civil rights attorney in Mississippi from 1968 to 1981 and in Washington from 1981 to present I have litigated more than 50 cases in the voting rights area. Many of these cases involved voter registration issues, either as the principal issue in the case or as a subsidiary issue in challenges to racially discriminatory methods of election. My most recent voter registration case, Mississippi State Chapter, Operation PUSH v. Allain, which I litigated with the NAACP Legal Defense Fund, was a statewide challenge to Mississippi's voter registration procedures, and I will have more to say about this case during the course of my testimony.

I have testified before congressional committees and worked in support of the extension of the Voting Rights Act in 1975 and 1981-1982 and have testified before congressional oversight committees several times on voting rights issues.

THE BILLS IN CONGRESS

There are currently pending in Congress several bills which have bipartisan support (H.R. 15, H.R. 17, H.R. 2190, S. 675) to eliminate barriers to voter registration and to make it easier to register to vote for Federal elections. Congress has the authority to enact such legislation based on its constitutional power to regulate the time and manner of Federal elections. In

addition, Congress has the authority under the Fourteenth and Fifteenth Amendments to eliminate racially discriminatory burdens on the right to vote. The purpose of my testimony is to analyze the need for this legislation and to survey the various remedies proposed in the pending bills.

I. THE NEED FOR FEDERAL VOTER REGISTRATION LEGISLATION

A. The Current Decline in Voter Participation in National Elections

Political analysts, members of Congress, national policy organizations, and citizens generally have been increasingly concerned about the dramatic decline in voter participation in national elections in this country. The presidential election last November was marked by the lowest voter turnout since 1924, with only about 50 percent of the eligible voting age population going to the polls and voting.[1] The 1986 congressional elections had an even lower turnout, with only about one-third of those eligible voting.

Political analysts have offered a number of explanations for this decline in voter participation, including the expansion of the eligible electorate, the low turnout among voters in the 18-to-24-year-old bracket, lack of partisan competition, alienation from the political process, and others. But there also is widespread agreement that a major factor contributing to this low participation rate is restrictions on voter registration that

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[1] Richard L. Berke, "Voter Decline Is Found Among Most Groups," New York Times, March 12, 1989, p. 25.

have the effect of preventing many Americans from registering to vote.

A New York Times-CBS poll taken last year indicated that the most frequent reason given by persons who did not vote was registration. The poll indicated that nearly 40 percent of those surveyed who did not vote indicated that they could not vote because they were not registered. Two-thirds of this group said that they would have voted if they had been registered. This survey is consistent with other data indicating that once people are registered to vote, over 80 percent of those registered go to the polls and vote.

The low participation rates in this country are increasingly becoming an international embarrassment to us. This country is unique among the other industrialized democracies in that each state sets its own voter registration laws. As a result, this country has a patch-work of voter registration procedures that vary from state to state with varying degrees of restrictions on registration. The one characteristic that they share--for all but a few states--is that they put the burden of registration on the citizen, rather than on the government as most of the other democracies do. As a consequences of these state restrictions, the United States has the lowest voter participation rate of any of the major industrialized democracies (see table 1).

Table 1. Voter Turnout Percentages in Democratic Nations.

1.	Belgium	95%
2.	Australia	94%
3.	Austria	92%
4.	Sweden	91%
5.	Italy	90%
6.	Iceland	89%
7.	New Zealand	89%
8.	Luxembourg	89%
9.	West Germany	87%
10.	Netherlands	87%
11.	France	86%
12.	Portugal	84%
13.	Denmark	83%
14.	Norway	82%
15.	Greece	79%
16.	Israel	78%
17.	United Kingdom	76%
18.	Japan	69%
19.	Canada	69%
20.	Spain	68%
21.	Finland	64%
22.	Ireland	62%
23.	UNITED STATES	53%
24.	Switzerland	48%

Source: Piven and Cloward, Why Americans Don't Vote.

B. Current Barriers to Voter Registration

Restrictions on voter registration are both a good-government issue and a civil rights issue. The right to vote under our democratic form of government is fundamental, and any burdens on that right go to the heart of our democratic system of government. Further, the state voter registration restrictions that are in effect today mostly are the product of state efforts in the 19th and early 20th centuries deliberately to restrict the franchise and to deny the right to vote to minorities, poor whites, and immigrants. States seeking to restrict the franchise relied both on discriminatory voter registration tests (like the literacy tests, the constitutional understanding tests, and the poll tax) and on restrictive voter registration procedures.[2]

Although most of the discriminatory voter registration tests were eliminated by the Voting Rights Act of 1965, constitutional amendments, and other Federal legislation, these Federal voting rights laws generally left untouched the restrictive and discriminatory voter registration procedures that were adopted during this same period to restrict the franchise. These procedures include the requirement that citizens travel to the county courthouse and report to a voter registrar to register to vote, restrictions on hours of voter registration, limitations on

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[2] See Frances Fox Piven and Richard A. Cloward, Why Americans Don't Vote (New York: Pantheon Books, 1988), chs. 2 and 3.

days of the month or week when citizens can register, limitations on the appointment of deputy registrars, limitations on the establishment of satellite voter registration sites, and selective purges and reregistration requirements.

The discriminatory impact of these restrictions on the right to register has been well documented over the years in studies, congressional hearings, and reports of congressional committees and government and private agencies.[3] But some of the most compelling evidence of these restrictions also comes from judicial findings in voting rights litigation, including cases litigated by the Department of Justice. Discriminatory voter registration practices and their impact on black citizens were particularly well documented in two voting rights cases filed by the Department of Justice in Alabama and in a recent district court decision in Mississippi.

United States v. Marengo County Commission.[4] In a 1984 opinion the United States Court of Appeals for the Eleventh

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[3] See, e.g., Voter Registration: Hearings before the Subcommittee on Elections of the House Comm. on Administration, 100th Cong., 2d Sess. (1988); Citizens' Commission on Civil Rights, Barriers to Registration and Voting: An Agenda for Reform (Washington: National Center for Policy Alternatives, 1988); Piven and Cloward, Why Americans Don't Vote; Report of the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, After the Voting Rights Act: Registration Barriers, 98th Cong., 2d Sess., ser. 18 (1984); H.R. Rep. No. 97-227, 97th Cong., 1st Sess. 14-17 (1981) (House Judiciary Committee report on 1982 extension of the Voting Rights Act); United States Commission on Civil Rights, The Voting Rights Act: Unfulfilled Goals, ch. 3, Registration (Washington: Government Printing Office, 1981).

[4] 731 F.2d 1546 (11th Cir. 1984), appeal dism'd and cert. denied, 469 U.S. 76 (1984).

Circuit described Justice Department evidence that showed that the county board of registrars was open only two days a month except in election years; that, contrary to state law, the board met only in the county seat and failed to visit outlying areas to register rural voters; and that the board failed to act on the offer of a black person to serve as a deputy registrar. From this evidence, the Eleventh Circuit concluded:

> These policies . . . unquestionably discriminated against blacks because fewer blacks were registered. If blacks are to take their rightful place as equal participants in the political process, affirmative efforts were and are necessary to register voters and to assist those who need assistance. By holding short hours the Board made it harder for unregistered voters, more of whom are black than white, to register. By meeting only in Linden [the county seat] the Board was less accessible to eligible rural voters, who were more black than white. By having few black poll officials and spurning the voluntary offer of a black citizen to serve as a registrar, county officials impaired black access to the political system and the confidence of blacks in the system's openness.[5]

United States v. Dallas County Commission.[6] Similarly, in United States v. Dallas County Commission the Eleventh Circuit recounted Justice Department evidence that showed continued discriminatory restrictions on voter registration by black people. Several government witnesses testified to the lingering hostility and fear of black people of the county courthouse, the only voter registration site in the county. The Justice Department evidence showed that the board of registrars had limited hours of registration, failed to go to the rural areas to

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[5] 731 F.2d at 1570.

[6] 739 F.2d 1529 (11th Cir. 1984).

register voters, and failed to appoint deputy registrars, all of which the U.S. House of Representatives Judiciary Committee in its report on the 1982 extension of the Voting Rights Act termed "blatant direct impediments to voting."[7]

The Eleventh Circuit ruled that the district court had erred in treating these restrictions as insignificant. The appeals court concluded that the limited hours were "inconvenient to those who work, especially those who work in the rural areas of the county," and described the testimony of one witness who explained that a person only had to go a few miles to vote but had to go 28 miles to the city and lose a day's pay in order to register. Although the board of registrars on occasion did have night and Saturday meetings, these meetings were only publicized at the courthouse and most people were unaware of them.[8]

The Eleventh Circuit also ruled that restricting voter registration to the courthouse was not sufficient and did not "address the possible need for the Board to take steps to carry on the registration process at other locations." The court concluded that "the district court erred in treating the Board's meeting at only the county courthouse as sufficient in light of the historical disenfranchisement of blacks in Dallas County." The Eleventh Circuit also considered the board's failure to appoint deputy registrars as "evidence of a failure to act to overcome past discrimination." All these restrictive practices,

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[7] 739 F.2d at 1538.

[8] 739 F.2d at 1538-39.

the court of appeals held, "hindered access to the political process by blacks and continued the effects of past discrimination."[9]

Mississippi State Chapter, Operation PUSH v. Allain.[10] A district court in Mississippi in 1987 in Mississippi State Chapter, Operation PUSH v. Allain struck down Mississippi's statewide voter registration procedures for having both a discriminatory purpose and a discriminatory effect that violated Section 2 of the Voting Rights Act. This case was a challenge to both Mississippi's "dual registration" requirement and to a state statute that prohibited voter registration outside the county registrars' offices in the county courthouse.

The district court found that the "dual registration" provision that required voters to register twice, first with the county registrar for Federal, state, and county elections, and again with the municipal registrar for municipal elections, was enacted as part of the Mississippi Plan of 1890 to deny black citizens the right to vote. The court also found that the state statutory restriction on satellite registration, which prohibited county registrars from removing the registration books from their offices without permission of the county board of supervisors, was enacted with a series of racially discriminatory statutes in 1955 (in the wake of the Supreme Court's Brown v. Board of Education decision) to restrict black registration. The district

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[9] 739 F.2d at 1539.

[10] 674 F. Supp. 1245 (N.D. Miss. 1987).

court agreed with the testimony of plaintiffs' expert historian that both statutes "were adopted for a racially discriminatory purpose."[11]

The district court also found that "[t]he remaining features of Mississippi's dual registration requirement and the prohibition on satellite registration have a discriminatory result and deny black voters equal access to the political process."[12] The district found that despite black gains in voter registration resulting from the Voting Rights Act of 1965, only 54 percent of Mississippi's eligible black population were registered to vote, as compared with 79 percent of the state's eligible white population, because of the state's continued discriminatory restrictions on the right to register.[13]

These continued restrictions included limitations on time and place of voter registration, restricted hours of registration, and limitations on the appointment of deputy registrars. The district court found that only 20 of the 81 county registrars had ever made a request to the county board of supervisors to conduct satellite registration, despite many requests to do so, and that on those rare occasions when satellite registration was

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[11] 674 F. Supp. at 1251-52.

[12] 674 F. Supp. at 1252.

[13] 674 F. Supp. at 1255. The district court found that a 1984 Census Bureau survey that showed that blacks in Mississippi were registered to vote at a slightly higher rate than whites was wrong because the responses were based on self-reporting by those responding to the survey and were not validated by reference to the voter registration rolls and because blacks tend to over-report voter registration. Id. at 1253-55.

conducted it was generally limited to precinct polling places. The evidence also showed that most county registrars limited voter registration to regular business hours during the week (often closing their offices for lunch), that only 43 out of 81 registrars had ever conducted evening registration, and that only a few had ever conducted Saturday registration beyond that required by statute (restricted to two Saturdays prior to each election).[14]

All of these restrictions, the court found, have a racially discriminatory impact. The court found that because disproportionate numbers of black people in Mississippi work in blue-collar and service-worker jobs for an hourly wage, they have less opportunity to leave their jobs during regular business hours to register to vote. In addition, the court found that "black citizens also are much less able than whites to travel to the county courthouse, or other centralized voter registration locations to register to vote." In Mississippi 27.8 percent of all black households have no motor vehicle available at home for household use, as compared with only 6.76 percent of all white families.[15]

Further, the district court found that registrars had appointed few deputy registrars, that numerous requests for appointment of volunteer deputy registrars were denied, that less than 20 percent of the voter registration officials were black,

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[14] 674 F. Supp. at 1247-48.

[15] 674 F. Supp. at 1256.

and that of 23 deputy registrars appointed, only six were black.[16]

In sum, the district court concluded that "[d]ifficulty in registration is the main reason for not voting" and that these "administrative barriers" to voter registration disproportionately impeded the voter registration opportunities of black citizens.[17] The court also noted that these restrictions "would presumably also have an adverse impact on poor whites in Mississippi."[18] The court held that these restrictions were not supported by any legitimate state interest or necessary to prevent vote fraud.[19]

These restrictions on the right to register to vote are not limited to Alabama and Mississippi.[20] Congressional committee reports and hearing testimony document that there are a number of

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[16] 674 F. Supp. at 1258-59. Even if deputy registrars had been appointed, they would have been restricting to registering voters at the county and city registrars' offices, or at precinct polling places on the rare occasions of satellite registration, because Mississippi did not and still does not permit door-to-door registration.

[17] 674 F. Supp. at 1256.

[18] 674 F. Supp. at 1253.

[19] 674 F. Supp. at 1266-68, 1269-70.

[20] For other court cases challenging restrictions on voter registration, see Rhode Island Minority Caucus, Inc. v. Baronian, 590 F.2d 372 (1st Cir. 1979); Iowa Socialist Party v. Slockett, 604 F. Supp. 1391 (S.D. Ia. 1985); Connecticut Citizen Action Group v. Pugliese, Civil No. N84-431 (D. Conn. Sept. 25, 1984); Project Vote! v. Ohio Bureau of Employment Services, 578 F. Supp. 7 (S.D. Ohio 1982). For a discussion of voter registration litigation, see S. Lapidus, Eradicating Recial Discrimination in Voter Registration: Rights and Remedies Under the Voting Rights Act Amendments of 1982, 52 Fordham L. Rev. 93 (1983).

states that restrict registration to a single location, usually the county courthouse, which is usually open only during normal business hours on weekdays; that limit the appointment of deputy registrars and discriminate in the appointment of deputy registrars; that prohibit door-to-door registration; that prohibit or restrict voter registration in agencies serving members of the public; that limit the use of and access to mail-in voter registration forms; and that have voter registration purging practices that disproportionately affect black communities.[21]

C. The Impact of Current Voter Registration Barriers on Black Citizens Nationally

These restrictive and discriminatory practices not only result in low voter registration rates nationwide, but they also have a discriminatory impact on minority voter registration nationally. The latest survey conducted by the Bureau of the Census for the November, 1988 presidential election indicates that in 20 of the 28 states for which the Census Bureau reports white and black voter registration rates, black voter registration rates were lower than white rates by an average of almost 9 percentage points (see table 2). The Census Bureau survey shows even worse disparities between white and Hispanic voter registration rates.

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[21] See House Subcommittee on Civil and Constitutional Rights Report, After the Voting Rights Act: Registration Barriers; 135 Cong. Rec. S3130-S3131 (remarks of Senator Cranston, summarizing testimony from congressional hearings and committee reports) (daily ed. March 17, 1989).

Table 2. States with higher white than black voter registration rates ranked from highest to lowest, 1988 Census survey data.

State	Registration Rates	Percentage difference
Massachusetts	W. 73.1 B. 45.0	28.1
Connecticut	W. 75.3 B. 50.5	24.8
Kentucky	W. 63.4 B. 45.8	17.6
Colorado	W. 75.3 B. 59.7	15.6
New York	W. 63.5 B. 49.5	14.0
New Jersey	W. 69.3 B. 59.7	9.6
D.C	W. 70.0 B. 62.3	7.7
N. Carolina	W. 65.6 B. 58.2	7.4
Georgia	W. 63.9 B. 56.8	7.1
Oklahoma	W. 66.5 B. 59.8	6.7
Alabama	W. 75.0 B. 68.4	6.6
Florida	W. 64.3 B. 57.7	6.6
Mississippi	W. 80.5 B. 74.2	6.3
S. Carolina	W. 61.8 B. 56.7	5.1
Virginia	W. 68.5 B. 63.8	4.7

Wisconsin	W. 85.6 B. 82.6	3.0
Missouri	W. 76.2 B. 73.5	2.7
Texas	W. 66.5 B. 64.2	2.3
Ohio	W. 69.7 B. 68.7	1.0
Maryland	W. 64.6 B. 64.5	0.1

Source: Bureau of the Census, Voting and Registration in the Election of November 1988 (Advance Report), Table 2 (February, 1989).

These data should be viewed with caution, however. The Census Bureau voting and registration surveys are based on self-reporting by persons responding to the survey and are not validated by checking the voter registration rolls. A number of validation studies have shown that persons generally overreport, that is, respond that they are registered or voted when actually they are not registered or did not vote, and that this over-reporting is higher for blacks than it is for whites.[22] Because small samples are used in the survey, the results also are subject to sampling variability, variations or errors in the data caused by chance and small sample size.[23]

Consequently, it is likely that these data overstate overall voter registration rates. In addition, because of the racial differences in overreporting, the situation for minorities is probably much worse than these Census Bureau data show. Thus, it is likely that the Census survey data minimize the differences, that the differences between black and white registration rates in these 20 states are probably much greater than what the Census Bureau reports, and that in most of the eight states for which

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[22] See, e.g., P.R. Abramson and W. Claggett, Race-Related Differences in Self-Reported and Validated Turnout, 46 J. Politics 719 (1984); J.P. Katosh and M.W. Traugott, The Consequences of Validated and Self-Reported Voting Measures, 45 Pub. Op. Q. 519 (1981); R.D. Shingles, Black Consciousness and Political Participation: The Missing Link, 75 Am. Pol Sci. Rev. 76 (1981); D. Cahalan, Correlates of Respondent Validity in the Denver Validity Survey, 41 Pub. Op. Q. 621 (1968).

[23] Bureau of the Census, Voting and Registration in the Election of November 1988 (Advance Report), p. 3 (February, 1989).

the Census Bureau reports that black rates are higher than white rates, the reverse is probably true--as it was for Mississippi in 1984.

II. PROPOSED LEGISLATIVE REMEDIES FOR ELIMINATING BARRIERS TO VOTER REGISTRATION FOR NATIONAL ELECTIONS

Although some progress has been made at the state level in eliminating barriers to voter registration, this progress has not been uniform nor sufficient. For example, in Mississippi, which has one of the worst records and in which the district court found discrimination, the state House of Representatives on January 26, 1989, by a vote of 67 to 53 passed a mail-in voter registration bill that was supported by the governor, the secretary of state, the attorney general, and other state officials. However, the very next day, on a motion to reconsider the bill, the same bill was defeated, thus killing the chances of passage of mail-in voter registration this year.

Several bills currently pending in Congress would provide effective remedies for these restrictive practices, including mail-in registration, agency-based registration, and election-day registration, and would significantly increase opportunities for voter participation. These remedies would steer a middle course between the restrictive practices than have denied minorities the franchise in Mississippi and Alabama and the state policy of North Dakota, which has no voter registration at all. They are modelled on procedures that have been adopted by a number of states which have increased voter registration rates without

jeopardizing the integrity of the electoral process.

1. Mail-in Registration. One proposed remedy is to allow citizens to become registered voters by filling out applications for registration and mailing their application forms in to the voter registrar. Once considered a controversial measure, mail-in voter registration now has broad support and has been adopted by 24 states and the District of Columbia. Mail-in registration eliminates the necessity of traveling to some central location and registering in person with a voter registrar during business hours during the week.

A problem with mail-in voter registration in some states that have it is the lack of availability of voter registration forms. Thus, in ranking the states according to voter participation, not all states that have mail-in registration have high participation rates. For mail-in registration to be effective, the forms must be made available at locations frequented by those who are most likely to be unregistered, persons who are not registered should be encouraged to fill out the forms and mail them in, and no form of notarization or voucher by another person should be required.

2. Driver's License Registration. Pending bills also require states to adopt procedures for allowing persons to register to vote when they apply for or renew their state driver's license and to change their voting address when they submit a change of address form for their driver's license. This provision also would be a significant advance and enjoys broad

support; about 15 states currently allow voter registration in connection with applications for a state driver's license or have mail-in voter registration forms available in the driver's license application office.

This provision, nicknamed "motor voter," would expand voter registration opportunities to everyone applying for a driver's license or renewal of an existing license. The problem with this provision is that it would not cover persons qualified to register to vote who do not have a driver's license and who have no need for one. As the data in the Mississippi case show, a disproportionately large number of black households in the South, as well as large numbers of white households, have no motor vehicle available for household use. While it is likely that some adult members of those households may have driver's licenses, it is also likely that large numbers of adult members of those households do not. Thus, driver's license registration must be supplemented by additional measures to reach qualified voters who do not have driver's licenses.

3. Agency-Based Voter Registration. Pending bills would require governmental and, on a voluntary basis, private agencies serving members of the public to provide qualified persons an opportunity to fill out voter registration forms in their offices while applying for the services or benefits provided by that agency. This could include public libraries and schools, as well as welfare offices, food stamp offices, and state unemployment offices, agencies that are likely to be visited by poor persons

and minorities who are most disadvantaged by existing voter registration barriers. The bills also would require officials in those offices, where necessary, to assist persons in filling out their voter registration forms. The requirement of assistance is an important provision; indeed, it is required by the Voting Rights Act.

This provision would be a significant advance. Experience over the last several years has shown that large numbers of unregistered adults can be registered to vote in governmental and private agencies serving members of the public. Officials in those offices may complain that voter registration adds to their duties, but this is a small price to pay for broadening the base of democracy. The courts have held in numerous cases that additional cost and administrative inconvenience are no justification for continuing to deny qualified persons the right to register to vote.[24] Currently, about 19 states provide for voter registration in state agency offices or make voter registration forms available in those offices.

4. Election-Day Registration. The most simple and direct remedy for barriers to voter registration is to let anyone who is qualified but who has not registered to vote prior to an election register at the polls on election day. In my experience poll watching in Mississippi elections over a number of years, an unnecessarily large number of persons are turned away from the

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[24] See, e.g., Dunn v. Blumstein, 405 U.S. 330 (1972); Ferguson v. Williams, 343 F. Supp. 654 (N.D. Miss. 1972) (three-judge court).

polls on election day because they thought they were registered, but weren't, or simply because their names cannot be found on the poll book. Sometimes this is not the voter's fault; frequently persons are turned away even though they are registered but their names are inadvertantly left off the poll books or their names are on the poll books in some other precinct. Any instance in which a person who possesses the necessary qualifications to vote is turned away from the polls is a defeat for democracy.

In the past, particularly in the South, states have established voter registration deadlines far in advance of an election with the intent that the requirement of advance registration would discourage voter participation in that election, particularly by minorities. We all know that interest in an election peaks in proximity to election day. Often voters do not even make up their minds for whom they are going to vote until the day before or even on the day of election. Thus, Mississippi in its Mississippi Plan of 1890, which was adopted to disfranchise black citizens and which also disfranchised large numbers of whites, required several deadlines. Mississippi required persons to live in the state for two years and in their voting precinct for one year before they could register, to pay all their poll taxes for the two years preceding an election, and to register to vote four months before an election to be qualified to vote.[25]

Today, many states provide that if a person thinks they are

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[25] Miss. Const. of 1890, Art. 12, Sections 241, 251.

registered but their names cannot be found on the poll book, they have a right to cast an affidavit or challenged ballot. After the election, officials check the original voter registration rolls, and if that person's name is found on the voter registration roll their ballot is counted. The rationale for counting that ballot is that the voter's name was inadvertantly left off the poll book. The provision for election day registration would apply the same concept to voter registration. If a person qualified to register comes to the polls but their name cannot be found on the poll book, because they inadvertantly failed to register to vote, they should be allowed to vote an affidavit ballot. If after the election that person is found to be qualified to register in that jurisdiction and has not voted elsewhere, that person's ballot should be counted and their name placed on the voter registration rolls.

Federal legislation adopting these provisions would be very effective in removing most of the existing barriers to voter registration and increasing the number of voters eligible to vote. Experience has shown that voter registration rates have increased dramatically in states which have adopted one or a combination of these procedures.[26]

Purging. Another issue that has arisen in congressional consideration of this legislation is the question of purging, or removing voters' names from the voter registration rolls because they have become disqualified. State and local election offi-

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[26] See 135 Cong. Rec. S3132 (remarks of Senator Cranston).

cials should be given the assistance they need to purge voters when they become disqualified, either by death, because they have moved to another jurisdiction, or because of conviction of a disqualifying crime or mental incapacity.

However, our position, and the position of most public interest organizations interested in increasing voter registration rates, is that the names of qualified voters should not be purged from the rolls of registered voters simply because they have not voted. Purging for nonvoting has been adopted in some states as a short cut simply because the registration officials have not done their jobs in removing disqualified persons.

Purging for nonvoting is inconsistent with the goal of maximizing opportunities for participation. Frequently it results in removing persons who are still qualified to vote in the jurisdiction, but simply, for one reason or another, have not voted. Thus, purging for nonvoting punishes the innocent--those who are qualified to vote but are purged simply for not voting--for the sins of the election officials--who have not done a good job in purging persons who have died, moved away, or become disqualified. In addition, the right to vote also implies a right not to vote, which sometimes is exercised as a protest against the choices available on the ballot. The right to protest by not voting should be considered part of the First Amendment freedom of speech and peaceful protest, and any interference with that right or punishment for exercising that right by removal from the voter registration rolls seriously

implicates First Amendment principles.

Some of the pending bills provide for mail checks to determine whether registered voters still reside at the address they gave when they registered to vote. In some jurisdictions, such as the District of Columbia, this has been effective in clearing the rolls of persons who have moved away. However, because minorities have greater mobility than nonminorities and are likely to change their addresses more frequently, bills providing for mail checks must contain safeguards to prevent mail checks from removing otherwise qualified persons and from being used in a racially discriminatory manner to disfranchise minority voters.

III. CONCLUSION

The right to vote is fundamental to our democratic system. Numerous studies, congressional reports, and judicial decisions have demonstrated that in America today the right to vote is unduly burdened by a patch-work of disuniform and restrictive state voter registration procedures. These restrictive procedures unnecessarily depress voter participation rates nationally and frequently have a discriminatory impact upon the opportunities of minority citizens to register and vote.

Current bills pending in Congress would eliminate these barriers and would increase opportunities for voter participation. We urge your support for legislation that will remove the existing barriers to voter registration for everyone, but particularly for minority citizens, that will maximize oppor-

tunities for voter registration in this country, and that will improve the opportunities for electoral participation for all our citizens.

LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW

SUITE 400 • 1400 EYE STREET, NORTHWEST • WASHINGTON, D.C. 20005 • PHONE (202) 371-1212

CABLE ADDRESS: LAWCIV, WASHINGTON, D.C.
TELEX: 205662 SAP UR
FACSIMILE: (202) 842-3211

July 17, 1989

Senator Paul Simon
Chair, Senate Subcommittee on the Constitution
Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Re: Hearing on S. 675, voter registration procedures for federal elections

Dear Senator Simon:

This is in response to your letter of May 18 requesting my answers to two questions which you posed during the Subcommittee on the Constitution hearing on Congressional legislation to reform voter registration procedures for federal elections.

My responses to your two questions are enclosed.

Thank you for the invitation to testify at this important hearing. If you need any additional information, please don't hesitate to contact me.

Yours very truly,

Frank R. Parker
Director, Voting Rights Project

Responses of Lawyers' Committee for Civil Rights Under Law to additional questions submitted by Senator Paul Simon, chairman of the Subcommittee on the Constitution

1. What can we do to ensure greater voter participation and greater voter access?

Numerous studies have demonstrated that voter registration barriers are a major cause of low voter participation in this country and deny citizens access to the voting process. Based on our 25 years of experience in dealing with voter access issues, the Lawyers' Committee for Civil Rights Under Law strongly believes that the key to increasing voter participation is to increase access to registration through reform of this country's restrictive and discriminatory voter registration procedures.

Twenty-five years after the three civil rights workers were murdered for their participation in a drive to register black people in Mississippi, we are still being faced with a disarming array of discriminatory voting registration laws. The Voting Rights Act of 1965 eliminated the discriminatory qualifications for voter registration--such as the literacy tests and constitutional understanding tests--but left in place discriminatory procedures--such as limitations on time and place of voter registration, restrictive days and hours of registration, lack of provision for satellite registration, and refusal to appoint deputy registrars--that continue to hamper equal access to the voting process.

The proposals for voter registration reform currently being considered by Congress, such as motor-voter, agency-based voter registration, mail-in registration, all of which have already

been tested in various states, would ensure greater voter participation and greater voter access. However, simultaneous implementation of these proposals is needed in order to reach the largest segment of the population. In addition, one state, North Dakota, has no voter registration requirements, and three states, Maine, Minnesota, and Wisconsin, allow voters to register to vote on election day.

Mail-in Registration

Mail-in registration permits qualified citizens to register by filling out a voter registration form and mailing it to the voter registrar. This voter registration procedure, once considered controversial, has been adopted by twenty-four states and the District of Columbia. While this is an excellent method of increasing registration, it has had only limited results in some states because of limitations on the availability of mail-in voter registration forms.

Motor vehicle voter registration and other agency-based procedures

"Motor-voter" registration, as it has been nicknamed, would permit qualified citizens to register to vote or change their voting address when they apply for or renew their driver's license. In addition, voters may change their voting address when they notify motor vehicle department officials of their change of address on their drivers' licenses. In Michigan, which originated this reform, the use of voter registration with drivers' license applications increased voter registration rates by 11 percent and more than 80 percent of the state's 6.5 million eligible voters are now registered.

There are limitations to this system, however. In many parts of the country, and particularly in the South, a disproportionate number of minority families do not have motor vehicles available for household use, and thus the use of the motor-voter procedure alone would have a racial and probably a class bias. This is why motor-voter must be supplemented by other procedures, including making voter registration forms available in government agency offices serving members of the public who are not likely to have motor vehicles, including welfare offices and unemployment offices.

Purging

Purging for non-voting continues to be a major obstacle to ensuring voter access. A recent lawsuit filed on behalf of the United Parents Association was brought in federal court in Brooklyn challenging New York's purging statute. Some 312,000 citizens were being faced with a purge simply because they had not voted in four years. The district court issued a temporary restraining order preventing notification letters being mailed. Less than two weeks later, the court issued a preliminary injunction preventing any purging until trial of the case.

Some states have purging-for-not-voting periods that are so short that the voter's failure to vote in one election makes them ineligible in the next. This is a major impediment to voting as many citizens are not aware when they go to the polls that they have been purged, and this particularly effects citizens who only vote in federal elections. The New York City experience shows that purging for not voting can become a revolving door; as many

people can be taken off the voter registration rolls for not voting as are added on through intensive voter registration drives.

Studies have shown that purging has a disproportionate affect on minorities and low income people. Rather than removing names from the rolls for not voting, we should allow citizens opportunities throughout the year to update their registration by allowing for a wide distribution of forms in agencies and by the U.S. mail. New York City recently began an agency-based registration program which has enjoyed tremendous success and which in just six months added 2.9 million unregistered voters to the rolls.

2. How can we do this without the abuse of the electoral system (voter fraud, etc.)?

In our view, the voter fraud issue is a false issue. Almost half of the states now have some form of mail-in voter registration, agency-based voter registration, or both, and there are few, if any, reports of voter fraud associated with these systems. These liberalized voter registration procedures have worked well in the states which have adopted them. Mail-in and agency-based voter registration systems have built-in protections against voter fraud by providing stiff penalties for false registration and by having mail checks to validate addresses. Computerized voter registration rolls also help to eliminate duplicate registrations by the same person.

Senator SIMON. I thank you, and I thank you for stopping as soon as that light went red there, too.

Incidentally, we are going to enter all of your statements in the record in full. You said enough that now, when we enter your statement in the record, I am going to read your statement here, Mr. Parker.

Althea Simmons, a real veteran in this room. We are very, very pleased to have you here again.

STATEMENT OF ALTHEA T.L. SIMMONS, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, WASHINGTON, DC

Ms. SIMMONS. Thank you so much, Mr. Chairman.

The NAACP is proud to speak on behalf of its 2,300 branches across the country. We have been in the voter registration business for 50 years, and I have personally been actively involved in statewide voter registration in Louisiana, Mississippi, Texas, South Carolina, Alabama, Missouri, and Indiana.

We know that there are still barriers to voter registration. In the last 72 hours I have talked to our leadership in about 15 States, and let me give you the feedback to them with reference to the barriers.

In Mississippi, deputy registrars do go to voting precincts to register people, but there is no Sunday registration. A large number of persons are available on Sunday. Our State Conference president informs me that there is no satellite or congregate registration. In addition to that, a major barrier, as Mr. Parker has indicated, is the distance involved in rural areas—getting to the registration site.

In Virginia, I am told now that there is satellite registration but there are some places where they do not use volunteer deputy registrars, for example: Accomack, Caroline County, Charlotte, Cumberland, Dinwiddie, Northampton, Northumberland, Prince Edward County, Pittsylvania, and Surry. The failure to deputize organizational or volunteer registrars does pose a serious barrier to voter registration.

Amelia, Buckingham, Charles City, Goochland, and Greenville Counties are areas where our leadership report that groups cannot sponsor registration drives. In Portsmouth the registrar refused to allow our local branch to set up a satellite site in a housing project, saying that it was too unsafe. The registrar felt that it could not be done and would not approve it.

There is a bill now pending in North Carolina before the general assembly that would be helpful in removing some of the barriers to voter registration. They do put limits on the number of deputy registrars.

The major barrier in Florida is a prohibition against Sunday registration. In addition, the election board must be notified a week in advance regarding site registration, and once a particular site has been designated, that site cannot be changed.

In South Carolina, despite the intent of the law, a number of potential voters using mail registration are being rejected on technicalities. For example, in rural areas you need to know where to

locate the person, so a map is attached to the application form. If anything is missing on that or if the map, for example, is missing from the form, then the application is automatically rejected.

Our branches in Missouri report that the major barrier to voter registration is the inability to get to the registration place because of the distance. This is significant since a large part of Missouri is rural. Many of our constituents are minimum wage earners, which means that they work from 9 to 6. Therefore, if the registration office is open only from 9 to 5, there is no possibility of them getting a chance to register to vote. In St. Louis, for example, organizational deputy registrars are not allowed.

Our branches in Texas report the inability of persons living in rural areas to get to fixed site registration places during the normal business hours. Another barrier cited was the refusal of election officials in Fort Ben Wharton—and, by the way, we just filed a lawsuit there—Denton, Big Spring, Midland, Odessa, and Marlin to deputize volunteer registrars. Longview, Houston, Corsicana, Port Arthur, and Tyler indicated that they have had no major barriers to voter registration.

The need for same-day registration has been noted in Texas. As a matter of fact, there are two bills, House bill 64 and House bill 268, now before that legislature. One of the bills, because of the tremendous opposition to same-day registration, was withdrawn just last week, I am told.

The NAACP supports same-day registration because we know it maximizes the opportunity for people to vote. We are aware of the testimony of State officials with reference to the inconvenience, but we say when you put the right of the franchise opposed to the inconvenience, the right of the franchise must obtain.

Mr. Chairman, purging is a major problem where our people are concerned. Just in Kentucky, for example, they purged the rolls this year, and I am told that out of the 29,000 persons purged, most of them were in Jefferson County where the bulk of blacks live and, as a matter of fact, as Senator Ford said, the bulk of the people live in Jefferson County. In Frankfort, 2,300 persons were purged from the rolls, and 17 percent of those were members of the black population.

We believe that if you purge the rolls every 2 years and you purge for nonvoting, that is a major barrier. I believe that if you can become a citizen of these United States, there shouldn't be an impediment, a barrier, to your exercise of the right of the franchise, and that everything ought to be done to make it very easy for us to be part of the political process. I personally have some questions as to why we need to have to register to vote, but we do support same-day registration.

We do know that something has to be done in order to ensure that the spirit and the intent of the 1965 Voting Rights Act, as amended in 1982, must become a reality to large numbers of Americans. There is a need to remove the barriers. The persons I talked with in 12 States are in agreement, in the main that the major barriers are distance involved, inflexible hours, fixed-site registration, and the failure to deputize organizational registrars.

Thank you so much.

[Ms. Simmons submitted the following material for the record:]

WASHINGTON BUREAU
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1025 VERMONT AVENUE, N.W. • SUITE 730 • WASHINGTON, D.C. 20005
(202) 638-2269

TESTIMONY

OF

ALTHEA T. L. SIMMONS

DIRECTOR, WASHINGTON BUREAU, NAACP

ON

VOTER REGISTRATION

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

COMMITTEE ON THE JUDICIARY

U. S. SENATE

May 10, 1989
1:30 p.m.
Senate Dirksen 226

Mr. Chairman and members of the Subcommittee, I am Althea T. L. Simmons, Director of the Washington Bureau of the National Association for the Advancement of Colored People. The NAACP, now in its 80th year, appreciates the opportunity to make a statement on behalf of its 2300 branches, state conferences and youth units located in all 50 states and the District of Columbia.

We are no strangers to this or any other committee of the Congress when issues affecting the basic right to the franchise are being considered. We concur with the Supreme Court, when it said that the franchise is "the essence of a democratic society and any restrictions on that right strikes at the heart of representative government."

Some pundits have said, you have the Voting Rights Act of 1965, as amended in 1982, what do you want now? Our straight forward answer is: legislation designed to encourage participation in the electoral process by easing and leveling the remaining barriers to voter registration. Studies tell us that the simpler the registration process, the greater the participation in the electoral process. We note an editorial which appeared in the November 14, 1988 issue of Business Week which stated: "Treat voting as a right, and make registration as simple as possible".

We do have some remarks to make generally regarding voter registration reform generally and the various measures currently before the Congress; however, I would like to initially focus attention on what we perceive as remaining barriers to voter registration. In previous testimony before this and other committees on the issue of registration we have dealt with intimidation and harrassment; access to registration; purging and re-registration; insufficient voting hours; limited use of deputy registrars, to mention a few. Mr. Chairman and members of the Committee, some of these

barriers still remain in varying degrees in 1989. In many rural areas, for example, persons wishing to register to vote must travel many miles, oft-times to a county seat in order to register. In some places, a number of registrars are unwilling to establish temporary loctions for registration; others refuse to deputize members of community groups to register persons at places other than the registrar's office. Many of the procedures relating to voter registration are under the control of the local election boards and the practices and procedures vary from county to county and/or jurisdiction to jurisdiction.

These barriers extend outside of the rural environment. Even in the core of the inner cities, where large numbers of the poor are locked in their communities, "accessibility" and "opportunity" are key aspects of voter registration.

The NAACP takes the position that one of the tenets of a democratic society is providing, or rather ensuring, the opportunity to participate fully in the electoral process. That simply means that registration opportunities must be provided in places where the citizenry is likely to be found. I recall vividly, that after the Voting Rights Act of 1965 was passed, Federal examiners who worked in the State of Mississippi, knowing the stigma attached to the courthouses and federal buildings, based on the previous treatment of black voters, provided alternative voting sites accessible to blacks which did not carry the stigma of "denial."

We have talked with our grassroots leadership in several states and counties to secure information to share with this Committee regarding the obstacles and/or barriers now being faced in their particular localities. Let me give you some of this feedback in vignettes. Many of the states, particularly in the South, do not permit Sunday registration, yet Sunday is

is a day when you can find large numbers of members of my community in church and civic settings and great progress could be made in providing the opportunity to register. As one of our local leaders put it: "the local stores are open on Sunday after 12:oo o'clock in order to take advantage of the opportunity to have people shop after church, why can't we register to vote after church?"

There is good news and bad news regarding voter registration. The good news is that, in some of the states where we had the worst problems, we now see light at the end of the tunnel. In MISSISSIPPI, deputy registrars go to voting precincts to register people; they can get registrars to come out on Saturdays, but there is no Sunday registration. Our State Conference President informed me that there is no "congregate" site registration, e. g. shopping malls, although more than 30 states have that type of registration. In addition, there are many city ordinances which will not allow announcements re registration sites etc. from sound trucks. That is considered a public nuisance and it is strictly enforced on election day. A major barrier in Mississippi is the distance involved for many people who live in rural areas, and most of Mississippi is rural, to get to the county court house or city hall - sometimes a distance round trip of 60 to 70 miles. Our branches heartily endorse postcard registration as a solution to this problem. The distance involved is further complicated by the lack of public transportation.

Another barrier that I lift up to the committee is one that plagues our Mississippi leadership, that is, the reluctance of many of the poor to register in deep rural areas because of the perception that the prson(s) they depend on for their livelihood may be opposed to their exercise of the franchise.

Attempts in the State of Mississippi in the last two years to pass legislation that would provide for deputy registrars in schools so that when a students graduates, the student would receive not only a diploma but also a voter registration card were unsuccessful.

There have been a number of changes in practices re voter registration in the State of VIRGINIA since this issue was last visited. State Law, I am told now requires satellite registration and registrars go to high schools; deputization is allowed, although not all registrars are cooperative. Our Virginia leadership reports that the following area have permanent site registration: Alexandria, James City County, Norfolk and Pittslyvania. The followign areas do not use volunteer deputy registrars: Accomack, Caroline County, Charlotte, Cumberland, Dinwiddie, Northampton, Northumberland, Prince Edwsard County, Pittsburgh and Surrey. The failure to deputize organizational or volunteers constitutes a major barrier to voter registration in the aforementioned areas.

It is also reported that in Virginia, a registrar cannot "solicit" persons to vote. As one of our branch president's puts it: "The registrar can be sitting there waiting for someone to come and several people can come by and the registrar cannot say, I am here to register anyone wishing to register to vote. A second party would have to do the "soliciting, if you call that soliciting."

The ability to fully participate in the political process is a powerful incentive to registering to vote. The at-large system in Virginia has been a barrier. The NAACP and other organizations have filed single-member district lawsuits to try and level that barrier.

Amelia, Buckingham, Charles County, Goochland and Greenville County are areas where our leadership report that groups cannot sponsor registration drives.

There is still reluctance in some sections of Virginia to deputize organizational representatives as deputy registrars. In Portsmouth, the registrar refused to allow our local branch to set up a satellite site in a housing project. The branch had requested permission to set up satellite sites in five (5) housing projects. The registrar said she felt it was unsafe. The local NAACP branch wanted to have some deputy registrars trained and the registrar refused that request.

On the Eastern shore in Northhampton County, our local branch requested deputy registrars and the clerk was evasive re the dates and times requested. The clerk will usually say that they need to know all the dates and times you want volunteer registrars. After they look at the listing, and, according to our leadership, if there are some big events that would probably bring large numbers of blacks out, "suddenly they do not have registrars available. One lay leader informed us that in many instances black volunteer registrars cannot register people unless there is some one from the registrar's office present all during the registration period.

In some locales the registrars will request "blanket site" coverage in key places in the community so that they do not have to get preclearance for each site since some sites are temporary.

In Waynesboro, our local branch requested a church site for voter registration. The clerk informed them that the law prevented voter registration in a church facility; that the site had to be open to the public. Our leadership could not understand that since churches are open to the public so it comes down to how the local registrar interprets the law.

Legislative attempts were made in the State legislature to require that all Department of Motor Vehicle offices have a registrar on duty all the time to register people. The piece of legislation never got out of committee

because the committee could not reach agreement re where the person was going to come from, would the individual be a part of the local registrar's staff or a member of the DMV staff.

Finally, where Virginia is concerned a recent issue of the News Leader carried the following headline "Purging of Names Cut Sharply Into City and State Voter Rolls". The bylined article stated that the Richmond voter rolls has reached the lowest point since 1978. State registration has declined after the annual purge of people who have not voted in four (4) years."

One of the major barriers to voter registration in the state is the difficulty in getting registrars to go into the poorer areas of the community and the sometimes rigidity of the hours of 8 a.m. to 5 p.m. for registration when many people are at work. This points up the need to deputize more organizational representatives to work the poorer communities and to accommodate voters who need "after business hours" opportunities to register to vote.

In NORTH CAROLINA, it is our understanding that a bill providing for post card registration is now before the General Assembly. This would be helpful in removing some of the remaining barriers to voter registration in the state. Our Voter Education director reports the following barriers in the state:

- o limits placed on the number of deputy registrars. (This is crucial since there is no uniform state procedure and whether or not deputies are used and how many is controlled by the local eleection board.

In FLORIDA there is a prohibition against Sunday registration. This serves as a major barrier in that Saturdays and Sundays are days when you can find large aggregations of potential black vogers. In addition, the election board must be notified a week in advance re site registration and once that site has been designated, there can be no deviation from it even if it later comes to your attention that an event will be held that will draw large

numbers of people thereby increasing the possibility of getting a larger number of people registered.

In SOUTH CAROLINA, in a number of communities the registration forms must be turned in on a daily basis because the election officials "don't want the forms to pile up." Barriers include:

- o inability to get deputy organizational registrars
- o fixed site registration
- o inability to get extended registration hours from the traditional 9 to 5 or 8 to 4
- o uniformity of weekend hours

Our State political action chairperson informed me that when you can get deputy registrars they set the time and place for registration and oftimes the sites selected are not the places where we can get large number of potential registrants.

If a potential voter wishes to register by mail s/he must have a witness to counter sign the application. The witness must be from the same county even though the witness who is a registered voter may know the individual seeking to register by mail.

In South Carolina, despite the intent of the law, a number of potential voters, using mail registration, are being rejected on technicalities. Because of the felt need to identify people who live in rural areas, there is a requirement that a map must be attached to the mail registration form. The maps are to show where people live. If the map is not on the form, the clerks reject the form. It is my understanding that the guidelines say that if there is a problem, the person submitting the application must be notified. The person who signs the form and the witness must be checked. Some clerks will not do phone verification if the map is not attached to the form.

Our State political action chairperson informed me that in five counties, York, Anderson, Lancaster, Pickens and Ocoqee, less than fifty (50%) per cent of their voting age population is registered. "In Lancaster, registration is bad--they have closed shops. The Board does not have proper outreach and they rely on organizational registration and they they reject a number of persons registered on technical grounds. In Oree county wide outreach efforts have been made in the white community but not in the black community."

Another barrier cited by our state leadership is the fact that most of the election boards remain all white despite the increase in the number of registered voters. The boards are appointed by the Senators with the consent of the Governor. In Ridgeland county, there was a b lack chair of the board. The chair had a heart attack and a white was appointed to fill the vacancy. Even in places where you have joint election commissions and election boards, in the main, the boards remain all white.

Our leadership cites the independence of each election board as a major barrier to voter registration. They report that some cities/towns are computerized and others are not so that the non-computerized cities/town are unable to link into the state-wide computer. In addition, the fact that mail registration has to be in 45 days as compared with 30 days for regular registration poses another barrier to voter registration.

Purging poses another barrier. Purging of the rolls now takes place every two years. One letter is mailed to each registered voter. No return card is given . If, for example, you are summoned for jury duty and the jury notice is returned by the postoffice, the individual is automatically removed from the voting rolls.

In NORTH CAROLINA, volunteer registrars are paid only 3 to 5¢ for each person registered, therefore it is difficult to get them to volunteer to come out on weekends. In Winston-Salem, students are permitted to register only if they have a driver's license which indicates the student is a resident of that city. The number of registration forms provided to volunteer registrars is limited to 25.

In FLORIDA, there is a purge every two (2) years and if the voter does not participate in the primary they are left off the rolls.

In MISSOURI, our branch reports that the major barrier to voter registration is the inability to get to the registration place because of the distance. A large part of Missouri is rural and many of our constituents are minimum-wage earners without private transportation.

In St. Louis, for example, organizational deputy registrars are not allowed.

In TEXAS, our branches report that the inability of persons living in rural areas to get to fixed site registration places during the normal business hours constitutes a major barrier to voter registration. Another barrier cited was the refusal of election officials in Ft. Ben Wharton, Denton, Big Spring, Midland, Odessa and Marlin to deputize "volunteer" registrars. Our branches in San Antonio, Ft. Worth, Sequin, Beaumont, Galveston, Marshall Longview, Houston, Corsicana, Port Arthur and Tyler indicate that they have not experience major barriers to voter registration.

The NAACP supports same day registration because it maximizes the opportunity for people to vote. We live in a mobile society and ofttimes people are faced with the reality that they have missed the deadline as a result of their move and therefore they are precluded from voting in a particular election. In addition, many people do not get excited about an election until it is emminent. Under present law, in most states, it is too late to translate that excitement into action. In addition, it is more convenient to vote if you only have to go to the courthouse or the place of registration one time.

The NAACP is consciously aware of the testimonies of election officials regarding the inconveniences they would experience in allowing same day registration. We believe the salient question is "do we value inconvenience over the basic right to vote?" "Should convenience dictate our approach to voting or registration?

The NAACP is not unmindful that there is the possibility that increased registration and day of election registration could lend itself to increased opportunities for fraud. We would expect election officials, pollwatchers and others to act responsibly to ensure that the possibility of fraud does not increase.

The Impact of Purging

Increased voter registration efforts must not be defeated by purging voter registration rolls. In my personal experience, over the last 28 years, I have seen a disproportionate number of blacks purged from the rolls on a wholesale basis for the express purpose of keeping them from voting. The NAACP was so concerned about the impact of purging, based on feedback from its units across the nation, that two years ago, at its 78th Annual National Convention it passed a resolution unequivocally resolving that

"the NAACP must see to it that any provision in legislation regarding 'purging the rolls' does not result in a disporportionate impact on blacks" We recognize that many jurisdictions allow such purges. Federal legislation should clearly eliminate such a process. Voting is a fundamental right and people should be encouraged to exercise that right without being penalized for failure to do so.

Mr. Chairman and members of the Subcommittee, the 1965 Voting Rights Act and its 1982 extension, in many ways, has eliminated the most blatant forms of voter discrimination. However, subtle forms and technicalities remain. Federal legislation to improve the registration process and to address the subtle opportunities for localities to disproportionately purge black voters is needed now. A democratic society calls for full participation of its citizens. Voter registration legislation, therefore, must be designed to actively encourage that full participation.

The NAACP could have brought many more examples of barriers from other states, but there is a commonality that is expressed in the ones we have chosen to talk about today.

We urge this committee and the Congress to act swiftly on vital legislation to ensure that the mechanism is in place which will level the remaining barriers to voter registration.

Thank you for this opportunity to be heard.

WASHINGTON BUREAU
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1025 VERMONT AVENUE, N.W. • SUITE 730 • WASHINGTON, D.C. 20005
(202) 638-2269

RESPONSES OF THE

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

TO QUESTIONS PRESENTED BY

CHAIRMAN PAUL SIMON

OF

THE SUBCOMMITTEE ON THE CONSTITUTION

ON

VOTER REGISTRATION

JUNE 5, 1989

WHAT CAN WE DO TO ENSURE GREATER VOTER PARTICIPATION AND GREATER VOTER ACCESS?

RESPONSE:

The NAACP believes that legislation designed to ease barriers to registration would help to ensure greater voter participation and greater voter access. As has been shown many times, the simpler the registration process, the greater the participation in the process. The NAACP believes legislation should provide for agency-based registration, mail-in registration and same day registration. Moreover, the legislation should not allow purging for non-voting and should only permit purging to the extent it is uniform and non-discriminatory.

Let me first focus on agency-based registra-stration. The NAACP believes registration opportunities should be made available where the citizenry is most likely to be found. That means that agencies that serve the public directly should also serve as places where registration of potential voters is undertaken. This includes public assist-ance offices, unemployment offices and schools. Hunting and fishing clubs and public libraries have also been suggested as registration sites. This is

good, so long as places normally used by lower income citizens, a major target population, are also used.

Along with expanding the numbers of places to register on a uniform basis, it is important that the registration process be automatized in key agencies where registration takes place. Much attention has been directed toward an automatic registration process at the Department of Motor Vehicles. That system is commendable because it will affect a large number of citizens. The NAACP, however, believes automatic systems should be in places in addition to the DMV. A significant number of blacks and other minorities will be missed by a DMV registration process in that a disproportionate number of blacks are minimum wage earners who do not own an automobile and who, in the normal course of events, would have no reason to go there. Thus, an automatic system must include those places that reach or service persons who do not drive or own cars--the public assistance offices and the unemployment offices.

Like agency-based registration, same-day registration would maximize the opportunity for people to vote. Often people miss the registration deadline as a result of a move and, therefore, they are precluded from voting in an election. Also, many people get excited about an election only at the point that the election is eminent. Then, it is too late to translate that excitement into action. Also, the NAACP recognizes the convenience if you only have to go to the courthouse or the place of registration/voting one time .

The NAACP also believes that the practice of mail-in registration, effective now in 24 states and the District of Columbia, will help to ensure greater voter participation. Mail-in registration will serve those who are unable to go to the registration sites--the sick and disabled, the elderly, those persons lacking transportation and those persons whose schedule will not permit them to register at the sites.

Ensuring voter registration, however, encompasses more than removing barriers. It means that we must not defeat increased voter registration efforts by burdensome and unfair purging of the voter rolls. The NAACP at its 78th annual convention two years ago unequivocally resolved that the NAACP must see to it that any provision in legislation regarding "purging the roles" does not result in a disproportionate impact on blacks. We are particularly sensitive to the issue of purging because of our awareness that a disproportionate number of blacks have been purged. Federal legislation should clearly eliminate unfair and disproportionate purging and, in particular, should eliminate the practice of purging for non-voting. Our goal must be to encourage and motivate and not to strip away a fundamental right.

HOW CAN WE DO THIS WITHOUT THE ABUSE OF THE ELECTORAL SYSTEM (VOTER FRAUD, ETC.)?

RESPONSE:

The NAACP is not unmindful that there is the possibility that increased registration could lend itself to increased opportunities for fraud, although successful experiences suggest otherwise. Same-day registration, for example, has worked successfully in Maine, Wisconsin and Minnesota without evidence of increases in fraud. Also, mail-in registration, when first introduced in many of the states, was thought to carry a risk of fraud. Yet mail-in systems have been working successfully. These successes suggest that fraud really should not be a baseline assumption justifying avoidance of same day, agency based or mail-in registration.

Specifically, as to the issue of fraud, it is the expectation of the NAACP that the election officials and pollwatchers will act responsibly to ensure that the possibility for fraud does not increase. The obvious downside of day-of-election registration is that the number and frequency of voter challenges will probably increase. Therefore, we urge that the procedures for challenges be as airtight as possible to prevent any possibility of a chilling effect on potential voters.

Senator SIMON. Thank you very, very much for your usual good job of testifying here.

I am advised that Dr. Flemming and Mr. Brown both have a plane to catch, so let me take Dr. Flemming next, here. Can you put the microphone by you there?

STATEMENT OF DR. ARTHUR S. FLEMMING, CHAIRMAN, CITIZENS' COMMISSION ON CIVIL RIGHTS, WASHINGTON, DC

Mr. FLEMMING. It is Mr. Brown that has the plane to catch, but we will team up at this point.

We appreciate very, very much the opportunity of appearing before the committee. As you indicate, I am accompanied by two of my colleagues really on the Commission. William Brown, who was chairman of the Equal Employment Opportunity Commission, and William Taylor, former staff director of the old U.S. Commission on Civil Rights.

We share the concern of many over the low turnout of eligible voters in recent national elections. We recognize that there are a number of factors that contribute to this serious problem. We join those who believe that the perpetuation of registration barriers is a major factor. As a result, these registration barriers are contributing to the weakening of our electoral process. Likewise, the registration barriers aid and abet those whose actions or failure to act are contributing to denying the right to vote because of race, color, national origin, creed, sex, age, income level, or handicap.

The Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, after holding hearings on registration barriers in 1984, concluded that those barriers effectively prevented many minority citizens from registering.

In 1985 our Citizens' Commission on Civil Rights held hearings on registration barriers in New York, Atlanta, GA, and Phoenix, AZ. We listened to 77 witnesses and a hearing record of more than 1,375 pages was compiled. Based on our hearings and the examination of other studies, our commission concluded that substantial barriers to registration and voting continue to exist in many areas of the country and that now, as in the 1960's, discriminatory practices continue to inhibit the participation of citizens in the electoral process on account of race, age, sex, income level, and physical disability.

Two of our specific findings on which we based this conclusion follows: First, although the restrictive practices of State and local officials affect all groups of citizens, they have a disproportionately adverse effect on low-income, minority, and disabled citizens. Second, while enactment and enforcement of the Voting Rights Act of 1965 has eliminated many blatantly discriminatory practices, remnants of the old system of disenfranchisement persist and are perpetuated by the lack of checks on the exercise of discretion by local officials.

Based on these findings, our commission recommended that Congress take two steps to help the Nation move forward in dealing with this major civil rights issue:

First, we recommended that legislation be passed which would require the States, in conducting Federal elections, to permit citi-

zens to register by mail. We also included in that recommendation, a further recommendation that the names of citizens should not be removed from registration lists for Federal elections solely for failure to vote in prior elections.

Our second recommendation was that Congress pass legislation which would require States, in conducting Federal elections, to permit citizens to register up to and including the day of elections. Three of my colleagues, including Commissioner Brown, proposed that same day registration be considered in separate legislation if its inclusion in a comprehensive bill would jeopardize the prospect for speedy enactment.

Many persons have made tremendous sacrifices in order to establish and implement the right to vote. When that right is taken away because of race, sex, handicap, age, or income, the victim's dignity and worth as an individual is seriously undermined. Barriers to registration are having that kind of an impact on the life of our Nation.

The removal of barriers to registration will make a significant contribution to increasing participation in the electoral process in our Nation; but, even if this were not the case, the removal of registration barriers should be high on our Nation's civil rights agenda. Our continued toleration of the status quo is indefensible. The barriers can and should be removed immediately.

[The prepared statement of Dr. Flemming follows:]

OUTLINE OF TESTIMONY

BY

ARTHUR S. FLEMMING
Chairman, Citizens' Commission on Civil Rights

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

May 10, 1989
Room 226, Dirksen Senate Office Building
1:30 p. m.

I. Introduction

A. The Citizens' Commission on Civil Rights welcomes the introduction of the Equal Access to Voting Act of 1989.

B. We share the concern of many over the low turn-out of eligible voters in recent national elections.

1. We recognize that there are a number of factors that contribute to this serious problem.

2. We join those who believe that the perpetuation of registration barriers is a major factor.

3. As a result these registration barriers are contributing to the weakening of our electoral process.

4. Likewise, the registration barriers aid and abet those whose actions or failure to act are contributing to denying the right to vote because of race, color, national origin, creed, sex, age, income level or handicap.

II. Body

A. The Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee after holding hearings on registration barriers in 1984 concluded that those barriers effectively prevented many minority citizens from registering.

B. In 1985 the Citizens' Commission on Civil Rights held hearings on registration barriers in New York, Atlanta, Georgia and Phoenix, Arizona.

1. We listened to 77 witnesses and a hearing record of more than 1375 pages was compiled.

2. While there were significant variations, in practices attributable to state laws, the members of the Citizens' Commission were impressed by the similarity of barriers to registration regardless of region.

C. Based on our hearings and the examination of other studies our Commission concluded that "substantial barriers to registration and voting continued to exist in many areas of the country and that now, as in the 1960s, discriminatory practices continue to inhibit the participation of citizens in the electoral process on account of race, age, sex, income level and physical disability." Two of our specific findings on which we based this conclusion follow:

"1. Although the restrictive practices of state and local officials affect all groups of citizens they have a disproportionately adverse effect on low-income, minority, and disabled citizens. For example:

(a) Limited sites for registration adversely affect citizens who do not own automobiles. Large numbers of these citizens are poor people and minorities.

(b) Limited hours for registration adversely affect citizens who cannot leave their jobs during the normal work day. These citizens are disproportionately minority and poor.

(c) Registration sites and polling places in many locations remain inaccessible to disabled people.

(d) Failure to provide assistance to voters with special needs (e.g., bilingual assistance) has an adverse impact on low-income citizens and ethnic minorities."

"2. While enactment and enforcement of the Voting Rights Act of 1965 has eliminated many blatantly discriminatory practices, remnants of the old systems of disenfranchisement persist and are perpetuated by the lack of checks on the exercise of discretion by local officials. For example:

(a) Where state laws permit the use of satellite registration locations or mobile units, local officials sometimes have refused to designate sites in Black communities.

(b) In some localities in the South, registrars have required excessive identification from Black applicants or otherwise acted in a manner which has deterred qualified Black citizens from registering.

(c) In some localities in the Southwest and West, Hispanic Americans and Asian Americans are subjected to undue scrutiny and suspicion concerning their citizenship.

(d) Dual registration requirements for tribal and state elections, along with registration sites that require extraordinarily long trips, serve as barriers to the participation of Native Americans."

D. Our Commission recommended that Congress take two steps to help the nation move forward in dealing with this major civil rights issue.

1. Require States in conducting Federal elections to permit citizens to register by mail.

2. Require States in conducting Federal elections to permit citizens to register up to and including the day of elections.

Three of my colleagues on the Commission proposed that same-day registration be considered in separate legislation if its inclusion in a comprehensive bill would jeopardize the prospects for speeding enactment.

III. Conclusion

A. Many persons have made tremendous sacrifices in order to establish and implement the right to vote.

1. When that right is taken away because of race, sex, handicap, age or income the victim's dignity and worth as an individual is seriously undermined.

2. Barriers to registration are having that kind of an impact on the life of our nation.

B. The removal of barriers to registration will make a significant contribution to increasing participation in the electoral process in our nation.

C. Even though this were not the case, however, the removal of registration barriers should be high on our nation's civil rights agenda.

1. Our continued toleration of the status quo is indefensible.

2. The barriers can and should be removed immediately for Federal elections.

D. This is not a situation where we should delay action because of a belief that the present situation might be better than the situation that would prevail after the removal of registration barriers.

E. We know that the removal of registration barriers would be a significant victory in the over-all struggle for Equal Access to Voting.

Senator SIMON. Thank you very, very much.
Commissioner Brown.

STATEMENT OF WILLIAM H. BROWN III, ESQ., COMMISSIONER, CITIZENS' COMMISSION ON CIVIL RIGHTS

Mr. BROWN. Thank you very much, Mr. Chairman. I too appreciate the opportunity to appear here before you this morning. I will shorten my remarks, as the others have done.

One of the things that our commission did find was that there was a wide discretion in local officials in setting the times, places, and conditions of registration. As a result, the discretion was often exercised in ways which established barriers to registration and voting. Permitting mail registration would overcome the problems posed by limited sites for registration, remote locations, limited hours, and locations which are inaccessible to disabled people.

We also found that even where State laws permitted the use of satellite registration locations or mobile units, many times local officials have refused to designate sites in minority communities. Registrars in many localities in the South require excessive identification from black applicants, while those in localities in the Southwest and West subject Hispanic-Americans and Asian-Americans to undue scrutiny and suspicion concerning their citizenship. Dual registration requirements for tribal and State elections, along with registration sites which require extraordinarily long travel, served as a barrier to the participation of Native Americans.

A major barrier to registration is inaccessible locations. In the South particularly, many voting locations are located in county seats requiring blacks in the South to travel 30 to 40 miles in order to register. Court actions challenging the registrars' refusal to establish more accessible registration locations have generally not been successful.

While many State election codes authorize the appointment of deputy registrars, it is clear that many local registrars have refused to do so or have made appointments in an arbitrary or discriminatory manner. In many mail registration States, the convenience of the mail system can be negated by registrars who restrict the number of forms registration groups can receive. Limited sites of registration adversely affect citizens who do not own automobiles, which in turn has a disparate impact on the poor and minorities.

Limited hours for registration adversely affect citizens who cannot leave their jobs during a normal work day, and again, these citizens are disproportionately minority and poor. Registration sites and polling places in many locations still remain inaccessible to the disadvantaged and disabled, and there is a continuing failure to provide assistance to voters with special needs, such as bilingual assistance, which has an adverse impact on low-income citizens and ethnic minorities.

It is clear to me that the Federal Government must take the lead in the elimination of the barriers to registration, which in turn will significantly increase the participation in the election process by the poor, minorities, the disadvantaged, ethnic minorities, and the disabled. The focus of the proposed legislation should be to remove

as many barriers to the registration process as possible. Through the elimination of barriers to registration, the Congress will ensure that the largest segment of our population will be able to enjoy the most fundamental of all rights in a free democracy—that of participation in the election process itself. The proposed legislation clearly sets us out in the right direction in order to achieve the goal of the greatest number of individuals participating in the keystone activity of any true democracy.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Brown follows:]

STATEMENT OF WILLIAM H. BROWN III, COMMISSIONER

CITIZENS' COMMISSION ON CIVIL RIGHTS

FORMER CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

MR. CHAIRMAN, THANK YOU AND THE COMMITTEE FOR THE OPPORTUNITY TO EXPRESS MY VIEWS AND THE VIEWS OF THE CITIZENS' COMMISSION ON CIVIL RIGHTS ON SENATE BILL 675, "THE EQUAL ACCESS TO VOTING ACT OF 1989." I AM PLEASED TO DISCUSS THE SUBJECT OF BARRIERS TO VOTER REGISTRATION.

WHILE THE UNITED STATES IS GENERALLY REGARDED AS A MODEL FOR DEMOCRACY THROUGHOUT THE WORLD, IT HAS ONE OF THE LOWEST RATES OF VOTER TURNOUT AMONG THE MAJOR DEMOCRATIC GOVERNMENTS. ON THE SCALE OF CITIZEN PARTICIPATION IN THE ELECTION PROCESS, THE UNITED STATES RANKS AS ONE OF THE LOWEST WHEN COMPARED WITH OTHER DEMOCRACIES. CLEARLY ONE IMPORTANT FACTOR CONTRIBUTING TO THE LOW VOTER TURNOUT IS THE VOTER REGISTRATION PROCESS.

RACIAL DISCRIMINATION, PREJUDICE AGAINST THE POOR AND UNEDUCATED, REMOTE REGISTRATION LOCATIONS, LIMITED HOURS WITHIN WHICH TO REGISTER ALL CONTRIBUTE TO THE DISENFRANCHISEMENT OF LARGE SEGMENTS OF OUR POPULATION. THE UNITED STATES IS STILL THE ONLY DEMOCRACY WHERE THE RESPONSIBILITY OF REGISTRATION IS PLACED ON THE INDIVIDUAL CITIZEN RATHER THAN THE GOVERNMENT ASSUMING THE BURDEN OF REGISTERING ELIGIBLE VOTERS.

RESTRICTIVE PRACTICES OF STATE AND LOCAL OFFICIALS WHILE AFFECTING ALL GROUPS OF CITIZENS HAVE A DISPROPORTIONATELY ADVERSE EFFECT ON LOW INCOME, MINORITY AND DISABLED AMERICANS. LIMITED HOURS FOR REGISTRATION DISPROPORTIONATELY AFFECT MINORITY AND POOR PEOPLE SINCE THESE INDIVIDUALS ARE MOST LIKELY UNABLE TO LEAVE THEIR JOBS DURING THE NORMAL WORK DAY. BECAUSE A LARGE NUMBER OF MINORITIES AND THE POOR DO NOT OWN THEIR OWN AUTOMOBILES, LIMITED SITES FOR REGISTRATION DISPROPORTIONATELY AFFECT THESE CITIZENS. THE ETHNIC MINORITIES FEEL THE BRUNT WHEN BILINGUAL ASSISTANCE IS NOT PROVIDED TO AID THEM IN REGISTERING TO VOTE AND IN VOTING.

BECAUSE THE ELECTORAL PROCESS IS LARGELY CONTROLLED BY THE STATES, REGISTRATION REQUIREMENTS VARY GREATLY FROM STATE TO STATE. SOME STATES ALLOW REGISTRATION BY MAIL WHILE OTHERS STILL REQUIRE IN-PERSON REGISTRATION AT AN ELECTION OFFICIAL'S OFFICE. THE LENGTH OF TIME THE REGISTRATION ROLLS CLOSE PRIOR TO AN ELECTION VARY FROM AS LONG AS 50 DAYS IN ADVANCE OF AN ELECTION UP TO AND INCLUDING ALLOWING THE REGISTRATION ON ELECTION DAY. RESIDENCY REQUIREMENTS RANGE FROM 30 OR MORE DAYS BEFORE AN ELECTION TO ONE DAY PRIOR. IN SOME STATES, DOOR-TO-DOOR REGISTRATION BY ELECTION OFFICIALS IS PERMITTED WHILE IN A FEW STATES SUCH DOOR-TO-DOOR CANVASSING IS EXPRESSLY FORBIDDEN.

OTHER PRACTICES WHICH LIMIT THE ABILITY OF LARGE SEGMENTS OF OUR CITIZENS TO REGISTER TO VOTE ARE THE PURGING OF REGISTRATION LISTS FOR FAILURE TO VOTE IN A PRIOR ELECTION, THE USE OF SATELLITE REGISTRATION SITES, THE REQUIREMENT OF PARTY REGISTRATION AND THE FAILURE TO ALLOW THE DEPUTIZING OF VOLUNTEERS TO REGISTER POTENTIAL VOTERS.

ONCE REGISTERED, UNITED STATES CITIZENS ACTUALLY VOTE AT RATES THAT ARE COMPARABLE TO THOSE OF OTHER WESTERN DEMOCRACIES. THE SURVEY CONDUCTED BY THE BUREAU OF THE CENSUS ENTITLED "VOTING AND REGISTRATION HIGHLIGHTS FROM THE CURRENT POPULATION SURVEY: 1964 TO 1980" FOUND THAT ONCE PEOPLE REGISTER THEY OVERWHELMINGLY GO TO THE POLLS AND VOTE. THUS, IT APPEARS CLEAR THAT REGISTRATION BECOMES THE KEY TO VOTER TURN OUT. SINCE IT IS ALSO CLEAR THAT REGISTRATION PRACTICES HAVE AN ADVERSE DISPROPORTIONATE IMPACT ON MINORITIES, THE POOR, THE ELDERLY AND DISABLED TO THE EXTENT THAT THESE GROUPS ARE PREVENTED FROM EXERCISING THEIR FRANCHISE RIGHT BECAUSE OF BARRIERS TO REGISTRATION, A LARGE SEGMENT OF OUR POPULATION CONTINUES TO BE DENIED ONE OF THE BASIC RIGHTS OF EVERY AMERICAN. SINCE ONCE REGISTERED, AMERICANS OF ALL INCOME AND EDUCATION LEVELS PARTICIPATE AT RATES SIMILAR TO THOSE IN EUROPE, THERE IS A CRITICAL NEED TO MAKE REGISTRATION SIMPLER AND MORE ACCESSIBLE AND THUS INCREASE THE PARTICIPATION OF THOSE HISTORICALLY EXCLUDED FROM THE ELECTION PROCESS.

WHILE THE NUMBER OF MINORITIES AND OTHER DISADVANTAGED GROUPS HAVE BEEN ABLE TO INCREASE THEIR REGISTRATION NUMBERS LARGELY AS A RESULT OF VIGOROUS ENFORCEMENT OF THE VOTING RIGHTS ACT OF 1965, THERE STILL IS A LARGE SEGMENT OF THESE TRADITIONALLY EXCLUDED GROUPS WHO ARE STILL UNABLE TO PARTICIPATE IN THE ELECTION PROCESS.

ONLY 23 STATES AND THE DISTRICT OF COLUMBIA CURRENTLY PERMIT REGISTRATION BY MAIL. THE EXPERIENCE OF THESE STATES HAS DEMONSTRATED THAT BY PERMITTING REGISTRATION BY MAIL, THERE IS A SIGNIFICANT INCREASE IN THE VOTING ROLLS WHILE STILL PROTECTING AGAINST FRAUD.

THE CITIZENS' COMMISSION ON CIVIL RIGHTS, AFTER CONDUCTING HEARINGS IN THREE CITIES (NEW YORK, ATLANTA AND PHOENIX) FOUND THAT WITH SOME EXCEPTIONS, THE REGISTRATION SYSTEMS THROUGHOUT THE UNITED STATES ARE INADEQUATELY FUNDED AND ARE OPERATED BY LOCAL OFFICIALS WHO LACK THE TRAINING AND EQUIPMENT TO SERVE CITIZENS EFFECTIVELY AND EFFICIENTLY. MOREOVER, THE COMMISSION FOUND THAT MOST STATE SYSTEMS VEST WIDE DISCRETION IN LOCAL OFFICIALS IN SETTING THE TIMES, PLACES AND CONDITIONS OF REGISTRATION AND AS A RESULT THE DISCRETION WAS OFTEN EXERCISED IN WAYS WHICH ESTABLISHED BARRIERS TO REGISTRATION AND VOTING. PERMITTING MAIL REGISTRATION WOULD OVERCOME THE PROBLEMS POSED BY LIMITED SITES FOR REGISTRATION, REMOTE LOCATIONS, LIMITED HOURS AND LOCATIONS WHICH ARE INACCESSIBLE TO DISABLED PEOPLE.

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WE ALSO FOUND THAT EVEN WHERE STATE LAWS PERMIT THE USE OF SATELLITE REGISTRATION LOCATIONS OR MOBILE UNITS, MANY TIMES LOCAL OFFICIALS HAVE REFUSED TO DESIGNATE SITES IN MINORITY COMMUNITIES. REGISTRARS IN MANY LOCALITIES IN THE SOUTH REQUIRE EXCESSIVE IDENTIFICATION FROM BLACK APPLICANTS WHILE THOSE IN LOCALITIES IN THE SOUTHWEST AND WEST SUBJECT HISPANIC AMERICANS AND ASIAN AMERICANS TO UNDUE SCRUTINY AND SUSPICION CONCERNING THEIR CITIZENSHIP. DUAL REGISTRATION REQUIREMENTS FOR TRIBAL AND STATE ELECTIONS, ALONG WITH REGISTRATION SITES WHICH REQUIRE EXTRA ORDINARILY LONG TRIPS SERVE AS A BARRIER TO THE PARTICIPATION OF NATIVE AMERICANS.

WHILE MANY RESTRICTIVE PRACTICES PERSIST IN A LARGE AREAS OF THE COUNTRY, SOME STATE LEGISLATORS AND EXECUTIVES HAVE TAKEN THE LEAD IN ADOPTING LAWS OR POLICIES THAT MAKE REGISTRATION AND VOTING EASIER. THESE INCLUDE INITIATIVES SUCH AS MAIL-IN REGISTRATION, ELECTION DAY REGISTRATION AND AFFIRMATIVE OUTREACH TO CITIZENS THROUGH THE CERTIFICATION OF CITIZEN VOLUNTEERS AS DEPUTY REGISTRARS OR PERMITTING REGISTRATION OF QUALIFIED VOTERS IN GOVERNMENT OFFICES.

A MAJOR BARRIER TO REGISTRATION IS INACCESSIBLE LOCATIONS. IN THE SOUTH, PARTICULARLY, MANY VOTING LOCATIONS ARE LOCATED IN THE COUNTY SEAT REQUIRING BLACKS IN THE SOUTH IN MANY STATES TO TRAVEL 30 TO 40 MILES IN ORDER TO REGISTER. COURT ACTIONS CHALLENGING THE REGISTRARS' REFUSALS TO ESTABLISH

MORE ACCESSIBLE REGISTRATION LOCATIONS HAVE GENERALLY NOT BEEN SUCCESSFUL. ACTIONS HAVE BEEN BROUGHT IN THE STATE OF ARKANSAS, MISSISSIPPI, LOUISIANA, GEORGIA, MICHIGAN AND MISSOURI AND HAVE BEEN DISMISSED. COURTS IN LOUISIANA, GEORGIA AND MICHIGAN HAVE DENIED PRELIMINARY INJUNCTIVE RELIEF TO COMMUNITY GROUPS WHO COMPLAIN OF INACCESSIBLE LOCATIONS. IN A MORE RECENT CASE, THE GEORGIA SUPREME COURT UPHELD A LOCAL BOARD'S REFUSAL TO DESIGNATE A BLACK CHURCH AS AN ALTERNATIVE SITE.

DUAL REGISTRATION REQUIREMENTS CONTINUE TO POSE A BARRIER TO MANY GROUPS. BOTH MISSISSIPPI AND GEORGIA HAVE ELIMINATED, THROUGH LITIGATION IN THE CASE OF GEORGIA, AND AN ACTION OF THE LEGISLATURE IN THE CASE OF MISSISSIPPI, THE UNDULY BURDEN OF DUAL REGISTRATION REQUIREMENT.

RESIDENCY REQUIREMENT AND REGISTRATION DEADLINES POSE A CONTINUING BARRIER TO INCREASING THE NUMBER OF ELIGIBLE VOTERS AMONG THE POOR, THE DISADVANTAGED AND MINORITY GROUPS. WHILE THE SUPREME COURT STRUCK DOWN A TENNESSEE REQUIREMENT THAT VOTERS HAVE AT LEAST ONE YEAR OF RESIDENCE IN THE STATE, IT UPHELD A 50 DAY REQUIREMENT UNDER ARIZONA LAW AND A REGISTRATION DEADLINE 50 DAYS PRIOR TO THE ELECTION.

WHILE MANY STATE ELECTION CODES AUTHORIZE THE APPOINTMENT OF DEPUTY REGISTRARS, IT IS CLEAR THAT MANY LOCAL REGISTRARS HAVE REFUSED TO DO SO OR HAVE MADE APPOINTMENTS IN

AN ARBITRARY OR DISCRIMINATORY MANNER. LITIGATION IN THIS AREA HAS NOT BEEN SUCCESSFUL.

IN MANY MAIL REGISTRATION STATES, THE CONVENIENCE OF THE MAIL SYSTEM CAN BE NEGATED BY REGISTRARS WHO RESTRICT THE NUMBER OF FORMS REGISTRATION GROUPS CAN RECEIVE.

LIMITED SITES FOR REGISTRATION ADVERSELY AFFECT CITIZENS WHO DO NOT OWN AUTOMOBILES WHICH HAS A DISPARATE IMPACT ON THE POOR AND MINORITIES.

LIMITED HOURS FOR REGISTRATION ADVERSELY AFFECT CITIZENS WHO CANNOT LEAVE THEIR JOBS DURING A NORMAL WORK DAY AND AGAIN THESE CITIZENS ARE DISPROPORTIONATELY MINORITY AND POOR.

REGISTRATION SITES AND POLLING PLACES IN MANY LOCATIONS STILL REMAIN INACCESSIBLE TO THE DISABLED AND THERE IS A CONTINUING FAILURE TO PROVIDE ASSISTANCE TO VOTERS WITH SPECIAL NEEDS SUCH AS BILINGUAL ASSISTANCE WHICH HAS AN ADVERSE IMPACT ON LOW INCOME CITIZENS AND ETHNIC MINORITIES.

IT IS CLEAR TO ME THAT THE FEDERAL GOVERNMENT MUST TAKE THE LEAD IN THE ELIMINATION OF BARRIERS TO REGISTRATION WHICH IN TURN WILL SIGNIFICANTLY INCREASE THE PARTICIPATION IN THE ELECTION PROCESS BY THE POOR, MINORITIES, THE DISADVANTAGED, ETHNIC MINORITIES AND THE DISABLED.

THE FOCUS OF THE PROPOSED LEGISLATION SHOULD BE TO REMOVE AS MANY BARRIERS TO THE REGISTRATION PROCESS AS

POSSIBLE. THROUGH THE ELIMINATION OF BARRIERS TO REGISTRATION THE CONGRESS WILL INSURE THAT THE LARGEST SEGMENT OF OUR POPULATION WILL BE ABLE TO ENJOY THE MOST FUNDAMENTAL OF ALL RIGHTS IN A FREE DEMOCRACY, THAT OF PARTICIPATION IN THE ELECTION PROCESS ITSELF. THE PROPOSED LEGISLATION CLEARLY SETS US OUT IN THE RIGHT DIRECTION IN ORDER TO ACHIEVE THE GOAL OF THE GREATEST NUMBER OF INDIVIDUALS PARTICIPATING IN THE KEYSTONE ACTIVITY OF ANY TRUE DEMOCRACY.

THANK YOU, MR. CHAIRMAN. I, ALONG WITH DR. FLEMMING, WILL BE HAPPY TO RESPOND TO ANY QUESTIONS THAT YOU OR THE COMMITTEE MEMBERS MAY HAVE.

Senator KENNEDY [acting chairman]. Thank you very much.

I will take advantage of our chairman being missing to join in welcoming Mr. Parker of the Voting Rights Project, Lawyers' Committee for Civil Rights Under Law. I have had a long association with that institution, and we appreciate very much your help and assistance in this legislation.

Mr. Brown, we worked with you many years ago when you served under President Nixon's administration in a responsible position. We know of your continuing work on this.

Arthur is a frequent visitor, and we are always inspired by his continued energy on all of these issues.

Althea, glad to have you back.

I don't have the good chance and opportunity to know some of our other members of the panel, but we want to extend a warm welcome to them, as well.

We will hear from Prof. Timothy O'Rourke. Professor O'Rourke is a professor at an institution near and dear to my own heart, the University of Virginia, where he is on the faculty of the Center for Public Service. He has written Law Review articles on the Voting Rights Act.

Professor O'Rourke.

STATEMENT OF PROF. TIMOTHY G. O'ROURKE, STAFF DIRECTOR, CENTER FOR PUBLIC SERVICE, UNIVERSITY OF VIRGINIA, CHARLOTTESVILLE, VA

Mr. O'ROURKE. Thank you, Senator.

The beginning point of almost every discussion of voter turnout in the United States is, that turnout is low. Turnout in the 1988 Presidential election—about half of the eligible electorate—was low in relation to levels of turnout recorded in Presidential elections in the 1960's as well as in the 1880's, and low when compared to turnout in other industrial democracies. While the United States recorded a voter turnout rate of about 54 percent for the period 1972–80, turnout in 20 other countries averaged 80 percent.

The gap between the United States and other democracies is, to a large degree, attributable to the American system of voter registration which, in contrast to other countries, places the burden of becoming registered on the individual citizen. For instance, G. Bingham Powell estimates that about half of the difference between voter turnout in America and turnout elsewhere can be attributed to our registration laws.

While low voter registration and low voter turnout are serious problems, they are not in my view plainly civil rights problems in the form anticipated by S. 675. Consider the Census Bureau survey of the 1988 election. While the percentage of women registered fell below the percentage for men as recently as 1976, since 1980 women have registered at a higher percentage than men. In 1988 the registration level for women exceeded that for men in 46 of 50 States.

The Bureau reported registration data by race for 27 States in 1988. In 22 of 27 States the percentage of blacks registered was at least 86 percent of the white registration level. In nine of these

States the black registration level was virtually equal to or greater than the level for whites.

Data for Hispanic citizens are far more problematic, in part because the disparities between rates of registration for Hispanics and whites are so stark, and in part because there seems to be greater question about the reliability of the data for Hispanics surveyed. In only 2 of the 12 States for which the Census Bureau reported data on Hispanic registration, did Hispanic registration exceed 80 percent of the level for whites.

To the extent that S. 675 is intended to focus on registration disparities between minority and nonminority citizens, it poses something of a paradox. A State with low voter registration but with equal levels of registration for minority and nonminority citizens apparently would escape the remedial provisions of S. 675. In contrast, a State with a very high overall registration level coupled with modest disparities among groups might be subject to the special requirements of S. 675.

Senator Cranston, it appears, has recognized this problem. In his comments in the Congressional Record, he observed,

> Other evidence of barriers—for example, overall registration rates falling below a certain level—might also be the basis for a State being obligated to develop a plan to remove barriers. The Attorney General is charged, under the bill, with establishing by regulation the criteria for which States would be required to develop and submit a voter registration plan.

Of course, if low voter registration per se could trigger the coverage of S. 675, then the concern of S. 675 for disparities among groups would seem to be misplaced. In short, if S. 675 is considered as an extended form of protection for racial and language minorities whom Congress has sought to aid through the Voting Rights Act, it is not clear that the bill is designed—in part because of ambiguities in the coverage formula—to achieve its intended result.

On the other hand, if S. 675 is supposed to be—by way of interpretation of either its age provisions or the establishment of a per se test of low voter registration—if it is intended to be a bill of universal application, it would be better in my opinion to recast it in a more conventional kind of proposal for uniform national standards for registration.

For various reasons, I am inclined to oppose national election day registration. Aside from the question of fraud, I think it would undermine the legitimacy of elections to the extent that it delayed the reporting of election outcomes while voter registration was verified. It would also pose an undue burden on the States.

I do see, however, great merit in a measure that would reduce the number of days that registration books are closed prior to election day. Other witnesses here today have supported that proposal. In effect, we already have a defacto national standard of 30 days in most States, and I see no reason not to reduce the number of days prior to election day before the election books are closed.

I also see considerable merit in proposals to enlist the Postal Service in a national system that would make it easier for those who move to remain registered. In a highly mobile society, the fact that there are many movers from one election to another has been demonstrably related to the problem of low turnout.

Thank you.

[Mr. O'Rourke submitted the following material for the record:]

REVISED

Testimony of Timothy G. O'Rourke
on S. 675, "Equal Access to Voting Act of 1989"
United States Senate, Committee on the Judiciary
Subcommittee on the Constitution
May 10, 1989

My name is Timothy G. O'Rourke. It is a privilege to have the opportunity to appear before this committee. I am a professor on the faculty of the Center for Public Service at the University of Virginia. My areas of concentration are state and local government and voting rights law; I have co-authored a recently published textbook on state and local government and have written several law review articles on the Voting Rights Act. The views expressed here today are my own and do not represent those of the Center for Public Service. My comments today touch on the general problem of low voter turnout in the United States and the specific provisions of S. 675.

The beginning point of almost every discussion of voter turnout in the United States is that turnout in the United States is low. Turnout in the 1988 presidential election--about half of the eligible electorate--was low in relation to levels of turnout recorded in, say, presidential elections in the 1960s or in the 1880s, and low when compared to turnout in other industrial democracies. While the United States recorded a voter turnout rate of 54 percent for the period 1972 to 1980, turnout in 20 other countries averaged 80 percent.[1] The gap between the United States and other democracies is, to a large degree, attributable to the American system of voter registration, which, in contrast to other countries, places the burden of becoming registered on the individual citizen. For instance, G. Bingham Powell estimates that about the half of the difference between voter turnout in America and turnout elsewhere can be attributed to our registration laws.[2]

And a number of observers have remarked that turnout among Americans who are registered to vote is quite high, well above 80 percent.[3]

It is at this point that many discussions of the voter turnout problem end. If voter registration laws are the principal barrier to higher turnout in the United States, the appropriate policy response, it is typically argued, is national action either to force states to adopt more permissive registration practices or to preempt altogether the authority of states to establish registration procedures. The most commonly debated national reform is some form of universal registration or election-day registration system.

Aside from the fact that neither the public nor Congress has rushed to embrace a national registration system, the problem of voter turnout is not quite as simple as the foregoing analysis might imply. First, voter turnout in the United States declined markedly from 1960 to 1988, even as voter registration laws in the states underwent a dramatic liberalization and characteristics of the American population (education, income, occupational status) changed in a direction (upward) that should have produced higher turnout.[4] The decline in voter turnout over the last three decades suggests, at the very least, that registration reform is, at best, a partial solution for the problem of low voter turnout.[5] Second, voter registration is strongly interwoven into the fabric of federalism: historically registration has been a responsibility of the states, registration practices vary widely among the states, and there seems to be widespread sentiment, at least among state and local registrars, that reforms that might work in one state might cause havoc in another.

[3]

A Summary of S. 675

Congress in recent years has regularly considered measures that would require all states to adopt certain voter registration procedures in order to raise the overall level of voter registration and, ultimately, voter turnout. In contrast to this sort of generalized approach to the problem of low voter registration and turnout, S. 675 is concerned with differential levels of voter registration among various groups in the population, finding that "restrictions on voter registration have had a discriminatory impact on the basis of race, color, national origin, [sex], age, and disability." [Secs. 2(a), 3] Thus, the bill targets states in which minority citizens register in lower percentages than nonminority citizens. Under S. 675, a state in which the ratio of minority registration to majority registration falls below a certain threshold is "deemed to have barriers to registration." The bill does not establish the threshold, but requires the Attorney General to do so [Sec. 4(a)] on the basis of data provided by the Bureau of the Census [Sec. 4(f)]. Once the Attorney General has determined that a state has barriers to registration, the state must submit to the Attorney General a plan that is designed to remedy "the disparities between minority and nonminority registration rates." [Sec. 5(b)] In evaluating the effectiveness of a state's remedial plan, the Attorney General is to "consider the extent to which the State plan" incorporates mail registration, registration at public agencies, registration at the time of motor vehicle or driver's license application (i.e., "motor voter" registration), and election day registration. [Sec. 5(d)] Although S. 675 treats the problem of low voter registration as a civil rights concern rather than as a more general concern, it calls for election day registration as a potential remedy for

whenever disparities in registration fall below the Attorney General's threshold.

In its basic outlines, S. 675 bears some similarity to the Voting Rights Act of 1965, which suspended the use of the literacy test in states and local jurisdictions that used the test (or similar barrier) and had voter registration or turnout below 50 percent in the 1964 presidential election. Like the 1965 law, S. 675 establishes a numerical threshold that brings states under coverage and requires covered states to make changes in the administration of their election laws. Like the 1965 act, S. 675 even permits states to bail out by providing that the terms of the bill will not be "applicable" once the ratios of minority to nonminority registration have exceeded the thresholds for "two successive general elections." [Sec. 4(c)]

Problems with S. 675

Unlike the 1965 act, which focused on the enfranchisement of blacks in the South and, subsequently, certain language minorities (primarily Hispanics), S. 675 casts a very broad net in terms of the groups to be brought under its protection. Not only blacks and Hispanics, but women (or men), the disabled, the young (or old), and other unspecified groups (discriminated against on account of "other factors") are covered by the bill. [Secs. 2, 3, 4(a)] While the 1965 law explicitly called for the suspension of the literacy test in covered areas, S. 675 targets all "limitations on the availability of opportunities to register, inadequate facilities or procedures to assure that any individual who is eligible to vote is afforded the opportunity to register, restrictions on the time, place, and manner provided for voter registration, and . . . other restrictions" designated by the Attorney General. [Sec. 4(a)] In essence, any prerequisite to registration or voting

[5]

Table 1
BLACK REGISTRATION IN RELATION TO WHITE REGISTRATION
IN 27 STATES, IN RANK ORDER, 1988

		Total Registered (Percent)	White Registered (Percent)	Black Registered (Percent)	Black Registered/ White Registered
(1)	Illinois	69.3	68.1	80.7	1.19
(2)	Tennessee	65.3	64.4	74.0	1.15
(3)	California	59.1	60.7	69.5	1.14
(4)	Indiana	68.4	67.9	75.6	1.11
(5)	Pennsylvania	62.2	62.6	68.0	1.09
(6)	Louisiana	75.1	75.1	77.1	1.03
(7)	Michigan	72.3	72.7	73.7	1.01
(8)	Arkansas	67.4	67.9	68.0	1.00
(9)	Maryland	64.1	64.6	64.5	1.00
(10)	Ohio	69.4	69.7	68.7	.99
(11)	Texas	65.8	66.5	64.2	.97
(12)	Wisconsin	85.4	85.6	82.6	.96
(13)	Missouri	74.8	76.2	73.5	.96
(14)	Virginia	66.9	68.5	63.8	.93
(15)	Mississippi	78.2	80.5	74.2	.92
(16)	South Carolina	60.4	61.8	56.7	.92
(17)	Alabama	73.3	75.0	68.4	.91
(18)	Oklahoma	64.6	66.5	59.8	.90
(19)	Florida	63.0	64.3	57.7	.90
(20)	Georgia	61.4	63.9	56.8	.89
(21)	North Carolina	63.6	65.6	58.2	.89
(22)	New Jersey	66.5	69.3	59.7	.86
(23)	Colorado	73.0	75.3	59.7	.79
(24)	New York	60.4	63.5	49.5	.78
(25)	Kentucky	62.2	63.4	45.8	.72
(26)	Connecticut	73.5	75.3	50.5	.67
(27)	Massachusetts	71.1	73.1	45.0	.62

Source: Adapted from data in U.S. Department of Commerce, Bureau of the Census, Voting and Registration in the Election of November 1988 (Advance Report), Current Population Reports, Series P-20, No. 435 (February 1989).

that produces disparate registration levels among minority and nonminority groups is suspect under S. 675. Notably--and again in contrast to the 1965 act (which itself set the 50 percent threshold for the triggering formula)--S. 675 does not establish the threshold "per centum of minority registration to nonminority registration" that would make a state subject to the special provisions of S. 675. S. 675 does not even make clear who constitutes nonminority registrants for purposes of various comparisons.

While low voter registration and low voter turnout are serious problems, they are not plainly civil rights problems in the form anticipated by S. 675. Consider the Census Bureau's survey of the 1988 election.[6] While the percentage of women registered fell below the percentage for men as recently as 1976, since 1980 women have registered at a higher percentage than men. In 1988, the registration level for women exceeded that for men in 46 of 50 states. The Bureau reported registration data by race for 27 states in 1988 (not counting the District of Columbia). In 22 of 27 states, the percentage of blacks registered was at least 86 percent of the white registration level; in 9 of these states, the black registration level was virtually equal to or greater than the level for whites. (See Table 1.) Data for Hispanic citizens are far more problematic, in part, because the disparities between rates of registrations for Hispanics and whites are so stark, and, in part, because there seems to be greater question about the reliability of the data for Hispanics surveyed.[7] In only two of the 12 states for which the Census Bureau reported data on Hispanic registration did Hispanic registration exceed 80 percent of the level for whites. (See Table 2.)

Whatever might be said preliminarily about the disparities related to sex, race, or national origin, the age discrimination provisions of S. 675 might well render redundant the coverage of all other groups. According to the Census Bureau, only 48.2 percent of citizens aged 18 to 24 were registered

[7]

Table 2

HISPANIC REGISTRATION IN RELATION TO WHITE REGISTRATION

IN 12 STATES, IN RANK ORDER, 1988

		Total Registered (Percent)	White Registered (Percent)	Hispanic Registered (Percent)	Hispanic Registered/ White Registered
(1)	New Mexico	64.4	66.6	57.9	.87
(2)	Pennsylvania	62.2	62.6	51.8	.83
(3)	Colorado	73.0	75.3	55.0	.73
(4)	Texas	65.8	66.5	45.5	.68
(5)	Arizona	62.5	64.0	39.6	.62
(6)	Florida	63.0	64.3	37.7	.59
(7)	New Jersey	66.5	69.3	39.3	.57
(8)	Illinois	69.3	68.1	35.7	.52
(9)	Connecticut	73.5	75.3	39.4	.52
(10)	New York	60.4	63.5	32.6	.51
(11)	California	59.1	60.7	24.4	.40
(12)	Massachusetts	71.1	73.1	28.8	.39

Source: Adapted from data in U.S. Department of Commerce, Bureau of the Census, Voting and Registration in the Election of November 1988 (Advance Report), Current Population Reports, Series P-20, No. 435 (February 1989).

to vote in 1988--a percentage well below the levels recorded for other age groupings and less than three-fourths of the overall national registration level, which was 66.6 percent. Although the Census Bureau's Report does not break down the age data by state, there is every reason to expect the national pattern is repeated in most of the states. Unless the Attorney General were to adopt an extremely lenient ratio with regard to age discrimination, it is highly likely that virtually every state would come under the coverage of the bill.

Even if the age issue is put to one side, S. 675 still appears to be less like a civil rights bill and more like a bill for election day registration. To the extent that S. 675 is intended to focus on registration disparities between minority and nonminority citizens, it poses something of a paradox. A state with low voter registration, but with equal levels of registration for minority and nonminority citizens, apparently would escape the remedial provisions of S. 675. In contrast, a state with a very high overall registration level, coupled with modest disparities among groups, might be subject to the special requirements of S. 675. Senator Cranston, it appears, has recognized this problem. In his comments on S. 675, in the Congressional Record [March 17, 1989, p. S-3132], he observed: "Other evidence of barriers--for example, overall registration rates falling below a certain level--might also be the basis for a State being obligated to develop a plan to remove barriers. The Attorney General is charged, under the bill, with establishing, by regulation, the criteria for which States would be required to develop and submit a voter registration plan." Of course, if low registration per se could trigger the coverage of S. 675, then the concern of S. 675 for disparities among groups would seem to be misplaced.

[9]

In short, if S. 675 is considered as an extended form of protection of racial and language minorities whom Congress has sought to aid through the Voting Rights Act, it is not clear that the bill is designed--in part because of amibiguities in the coverage formula--to achieve its intended result. On the other hand, if S. 675 is supposed to be--by way of interpretation of its age provisions or the establishment of per se test of low voter registration--a bill of universal application, it would be better, in my view, to recast it as a more conventional kind of proposal for uniform national standards for registration. For various reasons, I am inclined to oppose national election day registration; it would pose a risk of fraud, undermine the legitimacy of elections (to the extent that it delayed the reporting of election outcomes), and pose an undue burden on the states. However, I do see merit in a measure that would reduce the number of days that registration books are closed prior to election day (especially because previous decisions of the Supreme Court already have established a de facto national limit, with some exceptions, of 30 days). I also see considerable merit in proposals to enlist the Postal Service in a national system that would make it easier for movers to remain registered.[8]

I would welcome the opportunity to discuss these matters further with the committee.

Notes

1. G. Bingham Powell, Jr., "American Voter Turnout in Comparative Perspective," 80 American Political Science Review 17, at 23 (March 1986).

2. Ibid., p. 35.

3. David Glass, Peverill Squire, and Raymond Wolfinger, "Voter Turnout: An International Comparison," 6 Public Opinion 49, at 52 (December/January 1984).

4. See esp. Ruy Teixeira, "Will the Real Nonvoter Please Stand Up?" 11 Public Opinion 41, at 42 (July/August 1988); also Teixeira, "Registration and Turnout," 11 Public Opinion 12-13, 56-58 (January/February 1989).

5. Various studies have estimated that a national election day registration system would add 4 to 14 percentage points to voter turnout. See Raymond E. Wolfinger and Steven J. Rosenstone, Who Votes? (New Haven: Yale University Press, 1980), pp. 61-88 (9.1 percentage points); Powell, "American Voter Turnout," p. 35 (14 points); The Committee for the Study of the American Electorate, Creating the Opportunity: How Voting Laws Affect Voter Turnout (Washington, D.C.: The Committee, 1987), pp. 49-57 (estimating 7-8 percent increase in voters--or what I figure to be, very roughly, a 4 or 5 point increase in the total turnout percentage).

6. U.S. Department of Commerce, Bureau of the Census, Voting and Registration in the Election of November 1988 (Advance Report), Current Population Reports, Series P-20, No. 435 (February 1989). These data are themselves the subject of some controversy, since they tend to overstate both the level of registration and voting. On this point, see the remarks of Senator Cranston in the Congressional Record, March 17, 1989, S3133. Commenting on Sec. 4(f) of S. 675, Senator Cranston stated: "It requires the Attorney General, in conjunction with the Director of the Census to devise a reliable system for compiling statistics on registration rates. This provision was explicitly included . . . because of concerns about the accuracy and reliability of some of the registration statistics now available through the Census Bureau." For scholarly commentary on this issue, see Paul R. Abramson and William Claggett, "Race-Related Differences in Self-Reported and Validated Turnout in 1984," 48 Journal of Politics 412-22 (May 1986).

7. There is some question about the actual size of the eligible electorate among Hispanics, because of the large non-citizen population. See Citizens' Commission on Civil Rights, Barriers to Registration and Voting: An Agenda for Reform (Washington, D.C.: National Center for Policy Alternatives, 1988), pp. 70, 111, n. 29.

8. See Peverill Squire, Raymond E. Wolfinger, and David P. Glass, "Residential Mobility and Voter Turnout," 81 American Political Science Review 45-65 (March 1987).

May 21, 1989

Center for Public Service
University of Virginia

Deborah Leavy, Esq.
Chief Counsel
Subcommittee on the Constitution
Senate Committee on the Judiciary
524 Dirksen Building
United States Senate
Washington, D.C. 20510

Dear Ms. Leavy:

At the hearing on May 10th, Senator Simon asked each of the witnesses on the panel of which I was a member to address in subsequent correspondence these two questions: "(1) What can we do to insure greater voter participation and greater voter access? (2) How can we do this without the abuse of the electoral system (voter fraud, etc.)?"

With regard to the first question, I think that Congress should give attention, first, to defining more clearly the extent of the problem of low voter participation. As Warren J. Mitofsky and Martin Plissner argue in the enclosed article ["Low Voter Turnout? Don't Believe It," The New York Times, November 10, 1988], voter participation in the United States is not really as low as the putative statistics indicate; correctly estimating the eligible electorate and the recorded vote, they argue, would raise the percentage of voter turnout significantly.

On the matter of specific changes to increase real voter registration and turnout, I recommended in my written testimony that Congress consider (a) legislation that would require states to shorten the time period between the closing of registration and election day and (b) legislation that would make require the Postal Service to forward information on movers to local election officials. In addition, in light of the diminishing competition for House seats [see, e.g., Rhodes Cook, "Is Competition in Elections Becoming Obsolete?" 47 Congressional Quarterly Weekly Report 1060-65 (May 6, 1989)] and strong evidence that close electoral competition increases turnout [see, e.g., G. Bingham Powell, "American Voter Turnout in Comparative Perspective," 80 American Political Science Review 17, at 21-22, 25-26 (March 1986)], Congress should consider measures that would foster greater competition for congressional seats; among such measures might be federal strictures against partisan gerrymandering of House districts and (further) limitations on the use of the frank and other advantages accruing to incumbents.

With regard to the second question, I do not believe that any of the proposals outlined above would enhance the problem of election fraud, to the extent that the problem already exists. Nor do I believe that such proposals would do significant harm to the "federal" principle in election administration.

I hope that these comments are useful to the subcommittee.

Sincerely yours,

Timothy G. O'Rourke
Professor

Senator KENNEDY. Thank you very much.

Mr. Gahm, Assistant Secretary of State in Texas, Brad Gahm.

STATEMENT OF BRAD GAHM, ASSISTANT SECRETARY OF STATE, AUSTIN, TX

Mr. GAHM. Thank you, Senator.

Professor Jordan was kind enough to refer to me earlier, and I would note that there are many points of agreement that we share regarding the merits of this bill. Unfortunately, time constraints will require that I confine myself only to those minor points of disagreement.

Senator, you have pointed out to several of the witnesses in your questions the existence of the four States which do permit same-day registration and their performance. One of the things, however, I would like to point out to you—just because I happen to have some information available, although I had not necessarily planned to present that—is a comparison of percentage of turnout, which is the ultimate purpose of this bill, as compared to total voter registration over time, so that we don't take an isolated picture but we look at that performance.

Senator KENNEDY. Fair enough. Let me take my own time. You mean they were higher before that in any event? Were they in the top four or five?

Mr. GAHM. If you look at the total voting age population and then the registered voters and the turnout in a single election, those four States rank amongst the highest in the country. However, if you look at performance over time—for example, the 1984 Presidential election and the 1988 Presidential election—none of those four States rank even in the top 10 in the percentage change in the turnout. The top 10 States in the country all experienced a decline in percentage turnout at the polls, and none of those four States were part of——

Senator KENNEDY. I would be glad to examine that. I appreciate your mentioning that because it is helpful, you know, those statistics, whether they didn't grow as high as other States that did grow. I welcome the fact that you brought it up and I would like to thank you.

Mr. GAHM. Because obviously our goal is to look at——

Senator KENNEDY. We will count that on my time, for the timekeeper.

Mr. GAHM. Thank you.

I am concerned about section 4(a) of the bill, which would permit the Attorney General to deem the existence of barriers when the percentum of nonminority voter registration as compared to minority voter registration is in disparity. Senator Kennedy, the members of the subcommittee would be interested in looking at Texas' experience in particular.

In 1988 we registered 1.5 million new voters. That was the second best performance in the entire Nation. Texas has aggressively pursued a voter registration campaign. Our performance statistics nationally place us in the top four in performance over time, and yet on this section 4(a) I daresay that the Attorney General

would probably find that Texas' performance in percentum terms alone would not be equivalent to many other States in the Nation.

Now the problem with that is, there has been no examination; there has simply been a determination based on statistics alone, without looking at the performance of voter turnout. When we do that, we have established a quota system without evidence of a nexus between the facts and the quota system.

The Supreme Court has recently addressed that, in January of this year in the *City of Richmond* case, and talked about the principles. I believe that section 4(a), on the specific point of deeming that problem, to be poorly drafted.

We have also referred to the interest in avoiding vote fraud as it would relate to election day registration. Senator, I would point out that it is not merely a matter of convenience in permitting a period or a cutoff prior to election day. Indeed, it is necessary for election officials—of which I am one, in one of the largest States in this country—to be able to update and validate voter registration rolls.

But whether I make that statement here today to the committee is not nearly as persuasive as what the courts have done in examining specific evidence. The Supreme Court specifically considered this issue in 1972, and the court looked at evidence introduced by the State of Tennessee. A 30-day cutoff prior to election day was employed there, and the Supreme Court found that there was a compelling interest in permitting the election officials to have that 30-day period.

It was suggested earlier today by one witness that whenever the question of voter fraud is raised, we must at least ask ourselves, is the concern of fraud merely a political tool? Senator, I would point out that the author of the Supreme Court opinion in 1972 was Mr. Justice Marshall. I do not believe that he was simply ignoring the question of fraud when he found that a 30-day cutoff before registration day was legitimate in satisfying the State's compelling interest. I believe that the 30-day practice which Texas uses is appropriate.

Senator KENNEDY. Could I just suggest, Senator Simon went over to vote so that we could continue the hearing. He will be here momentarily. I will have to go, otherwise I will miss the vote, so we will just recess. He should be here momentarily.

I want to include—issues on constitutionality I guess have been raised—I will include a position by Professor Tribe at an appropriate place in the record, as well.

[The letter of Professor Tribe follows:]

HARVARD UNIVERSITY
LAW SCHOOL

LAURENCE H. TRIBE
Ralph S. Tyler, Jr. Professor of Constitutional Law

GRISWOLD HALL 307
CAMBRIDGE, MASSACHUSETTS 02138
(617) 495-4621

April 10, 1989

The Honorable Edward M. Kennedy
United States Senate
Committee on the Judiciary
Washington, D.C. 20510-6275

Dear Senator Kennedy:

Here are my views, which you requested through Jeff Blattner, about whether Congress has the constitutional authority to enact S. 675, the Equal Access to Voting Act, which is intended to eliminate discriminatory barriers to voter registration in federal, state and local elections.

Congress's authority to apply the bill to federal elections is clear, and that authority does not depend on the bill's equal protection rationale as expressed in § 2 -- for Congress enjoys plenary power to override voter qualifications set by states in congressional elections, under Art. I, § 4 ("Congress may at any time by Law make or alter such Regulations"), and by implication, in presidential elections. See L. Tribe, American Constitutional Law § 13-10, at 1084-85 (2d ed. 1988).

Congress enjoys no such plenary authority with respect to regulating state or local elections; the authority to apply this bill to those elections must come from some other affirmative grant of power to Congress. The conventional choice, of course, is § 5 of the 14th Amendment, as well as the enforcement clauses of the several specific voting-related amendments: the 15th, 19th and 26th. Section 2 of the bill points toward this rationale: the basic point of S. 675 is that many states have made it too difficult to register to vote and that this difficulty has had a discriminatory impact on various groups in our society, depriving them of equal protection generally and of voting rights specifically.

Of course, it is most unlikely that the Supreme Court would rule that the mere discriminatory impact of existing registration practices indicates a judicially redressable constitutional violation, absent further evidence that state officials intended those practices to have that effect. But even assuming that the courts would reject lawsuits making such claims, Congress's power to make its own finding that legislation is necessary to address these problems seems clear on any colorable reading of Katzenbach

v. Morgan, 384 U.S. 641 (1966). In Morgan, the Court reviewed a section of the Voting Rights Act of 1965 that effectively overrode New York's English literacy voting requirement, by guaranteeing Puerto Ricans the right to vote in state elections as long as they had finished the sixth grade in a Spanish-language school. Even though the Supreme Court had previously ruled that an English literacy requirement did not violate the 14th Amendment, the Court in Morgan effectively held (1) that Congress's power to enforce the 14th Amendment was significantly broader than that of the courts; (2) that Congress enjoyed superior fact-finding powers to discern that discriminatory impacts were not empirically justifiable and thus amounted to a constitutional violation; and (3) that by enhancing the access of Puerto Ricans to the vote, Congress was permissibly giving them a political weapon which in the long run would aid their access to nondiscriminatory distribution of political services. Morgan's broad reading of Congress's authority under § 5 of the 14th Amendment probably remains good law. See generally L. Tribe, supra, § 3-4, at 36-42; § 5-14, at 341-50. Earlier this year, Justice O'Connor, in her opinion in the affirmative action case, City of Richmond v. J.A. Croson Co., 109 S. Ct. 706 (1989), explained that Morgan makes clear that "[t]he power to 'enforce' [the 14th Amendment] may at times also include the power to define situations which Congress determines threaten principles of equality and to adopt prophylactic rules to deal with those situations." Id. at 719 (emphasis in original).

The rationale for S. 675 could be put in terms quite similar to those embraced in Morgan. Where specific minority groups that routinely receive judicial protection under the 14th Amendment -- such as racial minorities, women, the aged or the disabled -- are statistically underrepresented in voting registration, Congress may properly conclude that this suggests the existence of barriers to registration, erected by the majority deliberately or otherwise, which have the systematic impact of making minority access to the franchise more difficult. Congress may conclude that, precisely because courts may find it difficult to discern or dismantle these barriers, it must by legislation ensure that they are removed.

A separate rationale paralleling Morgan is that, even if no identifiable state barriers to registration exist -- so that potential voters are apparently failing to register simply because they don't want to bother to comply with obstensibly reasonable requirements for doing so -- Congress has a 14th Amendment purpose in making it even easier to register, and in enlarging the voting pool generally. For Congress might rationally conclude that the low registration levels among judicially protected groups create an unacceptable risk that government officials, both elected and appointed, will ignore the concerns of these groups because there is little likelihood that in the next election they will be in a position to retaliate with political muscle. Congress might conclude that this situation

denies such groups an equal chance at favorable government action, and that higher registration levels would foster government accountability that would rectify this situation.

This possible rationale also suggests a novel but noteworthy source of congressional power entirely separate from the 14th Amendment. If systematic underregistration among certain groups distorts government decisionmaking and the cohesiveness of the polity generally, there might be an argument that Congress should -- indeed must -- intervene in light of the requirement of Art. IV, § 4 that "[t]he United States shall guarantee to every State in this Union a Republican Form of Government . . . ." Although this would be an admittedly novel application of the Republican Form Clause, I think it's worth considering very seriously. The very fact that the Supreme Court has repeatedly held that the Republican Form Clause is not a justiciable basis for invalidating, at the behest of individuals, particular governmental arrangements at the state or local level supports this use of the clause because the Court has reached that conclusion in large part by reasoning that the clause amounts to a textual commitment to the Congress of the United States of the question of whether a particular state has a "republican" form of government. See L. Tribe, supra, § 3-13, at 98-100. If the task of deciding whether a state has a "republican" form of government belongs to Congress, and if the Constitution commands the United States to guarantee the citizens of each state such a governmental form, then the clause must confer on Congress the power to discharge this responsibility as it reasonably sees fit. And if the judiciary is committed to playing little or no role in this area, it follows that it should be particularly deferential to congressional exercises of that power.

Although citizens of a state have no right to vote for particular officials, or on particular matters, once a state decides to use the vote to resolve certain state and local matters it would certainly seem to foster republican government if public officials accountable to citizens at the polling booth faced the realistic potential participation of a diverse group of citizens. As long as Congress has the power and the duty to foster republican government among the states, and as long as that power extends to protecting the equality of the voting franchise, your bill seems reasonably "necessary and proper for carrying into Execution" that power, within the meaning of Art. I., § 8, cl. 18.

Finally, on a separate, more mundane level, the argument for applying this bill to state and local elections would become quite strong once Congress has concluded it should be applied to federal elections. A main point of the bill is to minimize confusion about what citizens have to do to register to vote in federal elections. If states were required to institute new plans for such federal registration while leaving old plans for state and local elections in place, confusion would be increased

by such a dual registration system. There thus seems a strong federal interest, enforceable through the Necessary and Proper Clause of Art. I, § 8, cl. 18, in combination with the plenary power over federal elections granted by Art. I, § 4, in having a unitary system for voter registration at all levels. That interest may or may not be enough by itself to give Congress power to proceed in this manner, but it is certainly a strong prudential argument for extending the bill's application, and is an argument that clearly has some constitutional force.

In sum, there is ample reason to believe that Congress has the constitutional authority to enact S. 675.

Sincerely,

Laurence H. Tribe

Laurence H. Tribe

Senator KENNEDY. I apologize, Mr. Fein, but I am going to have to go over. Senator Simon will be here in a moment.

[Recess.]

Senator SPECTER [acting chairman]. I have been asked to reconvene the hearing. On behalf of the subcommittee, I thank you for your patience. It is difficult to sit here all afternoon and see others testify, and see the Senators leave and return, and see the cameras depart and see the crowd thin, but you are veterans of this scene so you understand it, but let it be noted that we appreciate your presence.

I am on a difficult schedule and can only be with you until 5 o'clock, but in order to save your time I want to reconvene the panel and proceed at this time. I am told that on this panel Dr. Flemming and Mr. Brown have testified, so we are up to Mr. Fein.

Mr. FEIN. I think that Mr. Gahm had something.

Senator SPECTER. I am sorry. I am corrected. It is Mr. Gahm and then Mr. Fein and then Professor O'Rourke, so Mr. Gahm, the floor is yours.

Mr. GAHM. Thank you, Senator.

Senator, I just had a chance to make a few comments before we recessed. I did speak on same-day registration. I know you had some questions of other witnesses. If you have other questions, I would be happy to answer those, as well.

Also, just to deal with one final matter that I want to bring to the attention of the subcommittee, when we have mentioned here earlier—although it has not been discussed—the question of federalism, one of the points has been, what is the proper relationship and specifically how is it addressed in S. 675?

The courts have looked at the issue of congressional enactment of election laws as they affect the running of elections for State offices as opposed to Federal offices, and the court has held in that regard that while Congressmen enact legislation specifically affecting those Federal offices, the States have the right to run their own elections, so long as it is consistent with the Constitution, and that power is clearly reserved to the States.

Senator, there are no barriers to voting in the State of Texas, and I speak specifically about Texas because of my position as the assistant secretary of state. We have employed numerous opportunities to register additional voters, for example, as contemplated by S. 675, mail applications to voters so that they may be able to register. In addition, agency-based registration is employed in Texas. Legislation is currently pending before the Texas House to institute what has been referred to as motor-voter registration, so that the Department of Public Safety will be able to register new voters.

One of the things that Texas has already done is, even before motor-voter legislation was introduced, the secretary of state went to the Department of Public Safety, placed voter registration applications there, without the need for a legislative mandate to do that. One of the points of interest, then, is in looking at Texas, we have a bill here, S. 675, which would impose upon all States, including Texas, certain standards when it has not previously been determined what our performance has been, and the statistics we have already referred to establish what Texas' performance has been in the area of voter registration.

Finally, when we talk about the barriers which exist, I would simply like to reiterate the point of same-day registration. I believe that it would be fundamentally wrong for any legislation to enact same-day voter registration. The State has a compelling interest to clean up and ensure the integrity of voter registration rolls. The Supreme Court has specifically looked into this area and found that 30 days is an appropriate and necessary period of time for the States to protect that compelling State interest.

I think it is important to note that, of the many witnesses appearing today before the subcommittee, almost all of them have suggested that near-day registration at least would be appropriate. The courts have considered this issue and they have noted we simply do not arbitrarily pick a day. Is 10 days the appropriate near-day standard? No. The courts have said that specific evidence must be introduced on that point.

In the State of Texas we have 254 counties, a population which exceeds the vast majority of other States in this Nation. Simply to pick 10 days and say that voter registrar rolls for the entire population of the State of Texas—we cannot assume that that transfers equally to any other State, given the size of the populace. I think that is an important consideration when we recognize the compelling State interest that opposes same day registration.

Purge dates have also come before this committee as a question. In Texas we do employ a purging of rolls. It is on a 2-year basis. Now several questions have been raised about the purpose for this purge date. I would like to bring to the committee's attention one other point. It has been suggested that when a purge is made, we must be very concerned whether it has been used as a political tool to disenfranchise the populace.

I would point out that if we are working on the assumption which I believe this committee takes, that minorities and poor people are those most likely affected adversely by a purge, and then if the suggestion is made that it is a political tool, that does not translate into Texas. Of the 254 counties in Texas, the vast majority are run by Democrats who are elected county clerks. It is the county clerks who purge the rolls.

I do not believe that the evidence in any way supports it as being a political tool. The purging serves a legitimate purpose, to establish integrity in the voter registration rolls. Again, if we allow an arbitrary standard, rather than looking at specific evidence as in the case of Texas, S. 675 would not accomplish its intended purpose.

Thank you.

[Mr. Gahm submitted the following material for the record:]

STATEMENT BY

THE HONORABLE JACK M. RAINS

(GIVEN BY BRAD GAHM)

SECRETARY OF STATE OF TEXAS

BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

AT HEARINGS ON S. 675

(THE "EQUAL ACCESS TO VOTING ACT OF 1989")

MAY 10, 1989

Mr. Chairman and Members of the Senate Subcommittee on the Constitution:

This statement is to express my deep concerns with, and my strong and unequivocal opposition to, S. 675, a bill styled the "Equal Access to Voting Act of 1989."

While efforts to raise the depressed level of voter turnout in the United States are laudable, I believe the most appropriate, desirable, and constitutional means of achieving higher voter turnout rests with our state legislatures and not through legislation mandated by the U.S. Congress.

Specifically, I am opposed to the bill for the following reasons:

(1) The bill applies to both federal and state elections and, with such dual application, it is patently violative of the United States Constitution. While Congress has the power to enact legislation protecting the electoral process against state or local interference based on race, color, or previous condition of servitude pursuant to Article I, Section 4, Clause 1, of the Constitution and the Fourteenth and Fifteenth Amendments thereto, it does not have the power to

usurp the color-blind, nondiscriminatory functioning of the states to establish their own voter registration practices and procedures. It was long ago held that Congress had no power to enforce the Fifteenth Amendment by federal legislation that appertained to state and local elections, as well as federal. United States v. Reese, 92 U.S. 214 (1876). Almost a century later, the Supreme Court held that Congress could not, pursuant to Article I, Section 4, Clause 1, establish different qualifications for electors than those provided by the states. This landmark holding was Oregon v. Mitchell, 400 U.S. 112 (1970), an original proceeding in the Court in which the States of Oregon, Texas, Arizona, and Idaho resisted complying with certain portions of the Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314 (codified as amended at 42 U.S.C.A. §§ 1973, 1973b-1973c, 1973aa to 1973bb-4 (West 1981 & Supp. 1989)). The State of Texas sought to enjoin enforcement of the 1970 Amendments on the ground that Congress had no authority to enfranchise 18-year-old voters in state elections. The Amendments had attempted to grant such a franchise to persons aged 18 or over in both state and federal elections. In upholding the position of the states, Mr. Justice Black stated:

> [T]he Constitution was . . . intended to preserve to the states the power that even the Colonies had to

establish and maintain their own separate and independent governments, except insofar as the Constitution itself commands otherwise. My Brother HARLAN has persuasively demonstrated that the Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections. . . . No function is more essential to the separate and independent existence of the States and their governments than the power to determine within the limits of the Constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices (citations omitted). Moreover, Art. I, § 2, is a clear indication that the Framers intended the States to determine the qualifications of their own voters for state offices, because those qualifications were adopted for federal offices unless Congress directs otherwise under Art. I, § 4. It is a plain fact of history that the Framers never imagined that the national Congress would set the qualifications for voters in every election from President to local constable or village alderman. It is obvious that the whole Constitution reserves to the States the power to set voter qualifications in state and local elections, except to the limited extent that the people through constitutional amendments have

> specifically narrowed the powers of the States. . . . My Brother BRENNAN'S [dissenting] opinion, if carried to its logical conclusion, would, under the guise of insuring equal protection, blot out all state power, leaving the 50 States as little more than impotent figureheads. In interpreting what the Fourteenth Amendment means, the Equal Protection Clause should not be stretched to nullify the States' powers over elections which they had before the Constitution was adopted and which they have retained throughout our history. 400 U.S. at 124-26 (emphasis added).

After Justice Black's admonition, Congress properly introduced, and the legislatures of the several states ratified, S.J. Res. 7, 92nd Congress, 1st Sess. (1971), which was declared ratified as the Twenty-Sixth Amendment later that year.

All I am asking Congress to do in debating the merits of S. 675 is one simple thing: enact it legally, so that it will withstand constitutional attack. If the Congress believes that this bill is needed, it should be introduced in the form of a joint resolution proposing an amendment to the Constitution, and not in its present form --- a bill riddled with constitutional infirmities.

(2) Section 4(a) of the bill states that a state shall be deemed to have barriers to voter registration "if the per centum of minority registration to nonminority registration is less than the per centum established by the Attorney General by regulation." This criterion is nothing more than a pathetic euphemism that, translated, means racial quotas. While the drafter of this bill cleverly never used the word "quota" anywhere in the bill, the foregoing criterion means the same thing. The bill seeks to establish an unconstitutional, race-conscious quota system in a legal system that is supposed to be "color-blind."

The criterion set forth in Section 4(a) of the bill flies in the face of the holding of the Supreme Court earlier this year in City of Richmond v. J.A. Croson Company, ___ U.S. ___, 109 S. Ct. 706 (1989), wherein Justice O'Connor stated:

> Classifications based on race carry a danger of stigmatic harm. Unless they are strictly reserved for remedial settings, they may in fact promote notions of racial inferiority and lead to a politics of racial hostility. See University of California Regents v. Bakke, 438 U.S., at 298, 98 S.Ct., at 2752 (opinion of Powell, J.) ("[P]referential programs may only reinforce common stereotypes holding that certain groups are unable to achieve success without special

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protection based on a factor having no relation to individual worth"). We thus reaffirm the view expressed by the plurality in Wygant [v. Jackson Board of Education, 476 U.S. 267 (1986)] that the standard of review under the Equal Protection Clause is not dependent on the race of those burdened or benefited by a particular classification (citations omitted). See also San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 105, 93 S.Ct. 1278, 1333, 36 L.Ed.2d 16 (1973) (MARSHALL, J., dissenting) ("The highly suspect nature of classification based on race, nationality, or alienage is well established") (footnotes omitted). _____ U.S. at ___, 109 S. Ct. at 721.

(3) Section 4(c) of the bill requires that if a state is found to have "barriers to registration," then a plan must be submitted for approval by the Attorney General to equalize minority and nonminority voter registration to meet the voter registration racial quotas. These plans would be subject to modification by the Attorney General if a state failed to reach its racial quota within two successive general elections. I would suggest that Section 4(c), in plain English, has the effect of anointing the Attorney General of the United States as the "Elections Czar" for all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana

Islands, and any territory or possession that remains under United States jurisdiction when he ascends his throne. Again, the provisions of S. 675 would grant an unwarranted usurpation of powers and duties.

Should this unfortunate legislation become law, I can only advise my colleagues who are chief election officers of states found not to be in compliance with the regulations, ukases, and other edicts issued by this new "Elections Czar," that they should quietly abdicate and transfer their duties to administer state election laws to the Attorney General of the United States.

(4) Section 5(d)(1) of the bill mandates registration by mail as a factor to be considered by the Attorney General in evaluating a state plan for compliance. The State of Texas already has a system of mail-in postcard voter registration (instituted in 1975) which has proven quite effective in increasing our voter rolls. In fact, the Office of the Texas Secretary of State has increased, through an active voter registration program, Texas' number of registered voters by over one and one-half million (1,502,910) in 1988. Our postcard registration system provides for only a minimal wait of thirty days between the time the voter applies for a voter registration card and the date his voter registration becomes effective. The need for this thirty-day period is

to accomplish the state's compelling interest to protect against vote fraud.

A thirty-day "waiting period" has been upheld by the U.S. Supreme Court. Mr. Justice Marshall in Dunn v. Blumstein, 405 U.S. 330, 348 (1972) stated that, with respect to preventing fraud, "30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud . . . ." Indeed, two subsequent cases found fifty-day residency requirements constitutional. In Marston v. Lewis, 410 U.S. 679, 681 (1973) (per curiam), the Court upheld Arizona's fifty-day requirement:

> In the present case, we are confronted with a recent and amply justifiable legislative judgment that 50 days rather than 30 is necessary to promote the State's important interest in accurate voter lists. The Constitution is not so rigid that that determination and others like it may not stand.

See also a similar decision upholding Georgia's fifty-day voter registration requirement in Burns v. Fortson, 410 U.S. 686, 687 (1973) (per curiam).

(5) The election day voter registration provision included in Section 5(d)(4) of the bill is a seriously flawed concept

and one of the bill's worst features. The current Texas thirty-day voter registration waiting period is a fundamental protection to a democratic election process because it allows opportunity for verification of the potential voter's qualifications. If an election day voter registration system were employed, this opportunity for substantiation would be greatly reduced, and it is highly possible that ineligible persons would be participating in the election process. "Fair democracy" must never be sacrificed in the pursuit of "full democracy".

Further, Texas' liberal absentee voting laws, which allow a voter to cast an absentee ballot either in person (without stating a cause) or by mail (in certain circumstances) encourage open, unrestricted elections. Texas allows absentee voting in person from 20 days before the election to 4 days before the election. With regard to absentee voting by mail, a voter may request an absentee ballot 60 days before the election, and a local official may mail the ballot 45 days before the election, which is 15 days before the 30-day period a voter's registration becomes effective.

Additionally, a reasonable pre-registration period enables voter registrars to better anticipate and predict voter turnout, and thereby make adequate preparations for ballots, pollworkers, and the like. The number of election

precincts, and thus the number of election judges and clerks working at these precincts, is based upon the number of registered voters in each county.

Allowing persons to register to vote on election day itself might cause the state to be unprepared to meet voters' needs and could, by forcing long lines at the polls and running out of materials, effectively disfranchise a large number of voters. This proposal also would present, at the very least, a plethora of administrative difficulties. I do not believe such a system is feasible for the State of Texas. More importantly, I believe that such a system would not serve the best interest of the people of this State.

Parenthetically, I believe it is important to note that, according to the Secretary of State of California (as of December 15, 1987), election day registration is currently in effect in only four states (Maine, Minnesota, North Dakota,* and Wisconsin) and has indeed been repealed in two states that formerly utilized it (Ohio and Oregon).

* It should be noted that election day registration is in effect in North Dakota only because that state is the only state in the Union that has no system of voter registration whatsoever. North Dakota has, therefore, not adopted election day registration by positive legislative enactment. Thus, only three states have actually adopted election day registration.

The repeal of election day registration by a major state such as Ohio indicates to me that this concept of voter registration is not "an idea whose time has come," but is more akin to "a noble experiment that failed."

In addition, I received a letter dated November 24, 1987, from The Honorable Ben Meier, then-Secretary of State of North Dakota (one of the four states listed as having election day voter registration), in which he expressed his opposition to the Universal Voter Registration Act sponsored by Senator Cranston in the 100th Congress.

(6) The requirements of S. 675 for federal approval of state voter registration requirements and procedures are especially pernicious to the constitutional order of our government.

In my opinion, these sections of the bill are nothing more that a euphemism for federal bureaucratic infringement into, and de facto control of, an area hitherto within the purview of the states pursuant to the Tenth Amendment to the U.S. Constitution. These portions of the bill would serve to make a mockery of the basic precepts of federalism upon which our Republic was founded.

Should some member of the subcommittee question the continuing viability of the Tenth Amendment in the constitutional process of the United States, I would respectfully refer them to the words of Mr. Justice Marshall in Fry v. United States, 421 U.S. 542, 547 n.7 (1975) (8-1 decision):

> Petitioners have stated their argument, not in terms of the Commerce power, but in terms of the limitations on that power imposed by the Tenth Amendment. While the Tenth Amendment has been characterized as a "truism," stating merely that "all is retained which has not been surrendered," [quoting United States v. Darby, 312 U.S. 100 (1941)] it is not without significance. The Amendment expressly declared the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system. (Emphasis added.)

See also United States v. Tonry, 605 F.2d 144, 149 (5th Cir. 1979) and Pestrak v. Ohio Elections Comm'n, 670 F. Supp. 1368, 1375 (S.D. Ohio 1987).

This bill will inevitably, as is the case with all federal intrusion, have its impact on the rights exercised by the sovereign states in their constitutional regulation of an area so

important as the franchise. While the bill purportedly addresses the problem of low voter turnout --- which is, according to the Harvard-ABC Symposium in 1983 and the Commission on National Elections in 1986, allegedly "directly attributable to the haphazard systems of requirements for citizens to register to vote in the 50 states" --- it will have the real and actual effect of further eroding the Tenth Amendment protection afforded to each of the states.

While fifty systems of voter registration may be "haphazard," such diversity should not be unconstitutionally sacrificed on the altar of ever-growing federal interference and usurpation. As Mr. Justice Harlan, joined by Mr. Justice Stewart, stated:

> [I]t should be recognized that while the Fourteenth Amendment is a "brooding omnipresence" over all state legislation, the substantive matters which it touches are all within the primary legislative competence of the States. Federal authority, legislative no less that judicial, does not intrude unless there has been a denial by state action of Fourteenth Amendment limitations . . . .
>
> . . . [T]he Legislative Branch like the other branches of federal authority is subject to the governmental boundaries set by the Constitution. . . . For if Congress by what, as

> here, amounts to mere ipse dixit can set that otherwise permissible requirement partially at naught I see no reason why it could not substitute its judgment for that of the States in other fields of their exclusive primary competence as well.

Katzenbach v. Morgan, 384 U.S. 641, 670-71 (1966) (dissenting opinion) (emphasis added).

In sum, I oppose the proposed "Equal Access to Voting Act of 1989" because, although its stated desideratum is well-meaning, the legislation is, in my view, an unnecessary, unwarranted, unworkable, undesirable, and unconstitutional encroachment on the rights of the states to establish, operate, and maintain their own lawful systems of voter registration and election laws, directives, and procedures relating thereto.

Finally, I must question the propriety of having this bill referred to the Judiciary Committee, rather than to the Rules and Administration Committee where election-related legislation has traditionally been considered. This bill was referred to your committee because it purports to be a matter of "voting rights" legislation. Senator Cranston, and the bill's other sponsors, know that it is as difficult for a senator to vote against a piece of legislation styled "voting rights" as it would be to vote against apple pie, motherhood, or the American flag. In

addition, I speculate that Senator Cranston did not want the bill referred to the Rules and Administration Committee because it might well befall the fate of his earlier Senate Bills 1888 and 2061 in the 100th Congress (both styled the "Universal Voter Registration Act of 1988"), on which no hearings were held. It is my sincere belief that that same interment properly should be given to S. 675. Thank you for your consideration.

* * *

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State of Texas
OFFICE OF THE SECRETARY OF STATE
Post Office Box 12697, Capitol Station
Austin, Texas 78711

Jack M. Rains
SECRETARY OF STATE

June 5, 1989

The Honorable Paul Simon
Chairman
Subcommittee on the Constitution
United States Senate
524 Dirksen Senate Office Building
Washington, D. C. 20501

Re: S. 675 - "Equal Access to Voting Act of 1989"

Dear Chairman Simon:

Thank you for your letter of May 18 requesting further submissions for consideration by the subcommittee. Pursuant to your request, my response to Professor Tribe's letter is appended hereto and marked as "Attachment A", and the responses to the various written questions are appended hereto and marked as "Attachment B".

Thank you for granting us the opportunity to testify before the Subcommittee on the Constitution regarding this most important issue. We would be pleased to provide additional information or further responses at the request of the subcommittee.

Sincerely,

Brad N. Gahm
Assistant Secretary of State

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Attachments: Fifty (50) copies of the responses to written questions of the subcommittee, submitted by The Honorable Jack M. Rains, Secretary of State, and Brad N. Gahm, Assistant Secretary of State.

ATTACHMENT "A"

RESPONSE TO PROFESSOR TRIBE'S APRIL 10, 1989, LETTER TO SENATOR KENNEDY REGARDING THE CONSTITUTIONALITY OF S. 675

As you and the subcommittee members present at the May 10 hearing are aware, at that time I did not know of Professor Tribe's letter. Now that I have been furnished a copy of the letter, I am pleased to respond.

Professor Tribe is wrong in his conclusion that S. 675 is consistent with the constitutional authority of Congress. His error arises from a misplaced reliance on Katzenbach v. Morgan, 384 U.S. 641 (1966), and his complete disregard of Oregon v. Mitchell, 400 U.S. 112 (1970). The Constitution reserves to the States the plenary power to control state and local electoral processes, including voter registration, and no usurpation by Congress is authorized by the Fourteenth Amendment.

Professor Tribe desperately seeks a rationale for a laudable goal ---fair, unbiased voter registration procedures. Regrettably, he is willing to extend to Congress the same "creative role" which he would concede the Court: "In advocating a more candidly creative role than conventional scholarship has accorded the courts, I see myself as a proponent more of self-awareness than of an altered balance of governmental power. . . . The inescapable boundaries of societal context and consciousness argue not that judges should restrain themselves still further . . . ." L. Tribe, American Constitutional Law, preface to first edition, at viii (2d ed. 1988).

As Professor Tribe admits in his letter, Congress enjoys no plenary authority concerning state and local elections, and that "it is most unlikely that the Supreme Court would rule that the mere discriminatory impact of existing [voter] registration practices indicates a judicially redressable constitutional violation, absent further evidence that state officials intended those practices to have that effect."

Where Professor Tribe "misses the boat" is in his misplaced reliance on Katzenbach v. Morgan, supra. He erroneously states that "Morgan effectively held . . . that Congress' power to enforce the 14th Amendment was significantly broader than that of the courts." Further, he states that "Morgan's broad reading of Congress' authority under § 5 of the 14th Amendment probably remains good law." If Morgan is still good law, it is nevertheless wholly inapplicable to the right of the States to control local elections and, therefore, offers absolutely no constitutional support for Congress to enact S. 675.

Let me address the continuing applicability, if any, of Morgan in constitutional jurisprudence. In upholding the constitutionality of Section 4(e) of the Voting Rights Act of 1965, Pub. L. No.

89-110, 79 Stat. 439 (codified as amended at 42 U.S.C.A. § 1973b(e) (West 1981)), the Court stated that "§ 5 is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment." 384 U.S. at 651.

In his letter to Senator Kennedy, Professor Tribe states that Morgan held that "Congress' power to enforce the 14th Amendment was significantly broader than that of the courts . . . ." This is an incorrect and alarming statement. The Morgan Court held simply that "[T]he McCulloch v. Maryland [17 U.S. (4 Wheat.) 316 (1819)] standard is the measure of what constitutes 'appropriate legislation' under § 5 of the Fourteenth Amendment." Id. The McCulloch standard referred to is:

> Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional. 17 U.S. (4 Wheat.) at 421.

What Professor Tribe suggests in his letter to Senator Kennedy (that Congress has broader powers than the courts to enforce the Fourteenth Amendment) is nothing less than a frightful concept of the first magnitude. Tragically, Professor Tribe appears ready to overturn the hallowed, never-reversed, and, until now, never-doubted, concept that the Court, not Congress, is the supreme arbiter and interpretor of the Constitution and of the laws of the United States.

I should like to ask Professor Tribe one simple question: Whatever happened to Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)? His exponential view of Morgan, if sustained, would have the practical result of rendering the Court nothing more than a pitiful, helpless eunuch whose only role, in Voting Rights Act or civil rights cases, would be to simply acquiesce to each instance of Congress' alleged "expertise" and superior constitutional power.

Only four years after Morgan, its vitality was in considerable doubt. This occurred in the case of Oregon v. Mitchell, supra, which Secretary of State Rains fully discussed in his testimony filed with your subcommittee on May 10.

In Oregon v. Mitchell, four justices accepted Morgan's holding (Justices Brennan, White, and Marshall [400 U.S. at 229, 278-81], Justice Douglas [Id. at 135, 141-44]), one justice rejected it totally (Justice Harlan [Id. at 152, 204-09]), another limited the holding only to racial cases (Justice Black [Id. at 119, 126-31]), and three (Chief Justice Burger, and Justices Stewart

and Blackmun [Id. at 296]) did not feel that Morgan conferred on Congress the power to determine, as a matter of substantive constitutional law, what particular situations fell within the ambit of the Equal Protection Clause.

It is thus extremely doubtful that the Court, as presently constituted, would sustain the Morgan holding.

Perhaps the best way to dispense with the views of Professor Tribe is to quote from his own tome:

> Every state, as well as the federal government, imposes some restrictions on the franchise. Although free and open participation in the electoral process lies at the core of democratic institutions, the need to confer the franchise on all who aspire to it is tempered by the recognition that completely unlimited voting could subvert the ideal of popular rule which democracy so ardently embraces. Moreover, in deciding who may and who may not vote in its elections, a community takes a crucial step in defining its identity. If nothing else, even though anyone in the world might have some interest in any given election's outcome, a community should be empowered to exclude from its elections persons with no real nexus to the community as such . . . .
>
> . . . .
>
> Since the Constitution does not confer upon Congress any general authority to regulate the qualifications for voters in state elections, those qualifications are the exclusive province of the state governments except insofar as they contravene the Constitution or a statute validly enacted by Congress pursuant to some other constitutional authorization . . . . [Oregon v. Mitchell] thus establishes that Congress may not justify a general regulation of state voting qualification requirements by reference to the Civil War Amendments. L. Tribe, supra, § 13-10, at 1084-85 (2d ed. 1988) (emphasis added).

I must point out that Professor Tribe conscripts, by taking out of context, Justice O'Connor's quotation from City of Richmond. The full quotation is as follows:

> What appellant ignores is that Congress, unlike any State . . . has a specific constitutional mandate to enforce the dictates of the Fourteenth Amendment. The power to "enforce" may at times also include the power to define situations which Congress determines threaten principles of equality and to adopt prophylactic rules to deal with those situations. See Katzenbach v. Morgan . . . .

The Honorable Paul Simon
Chairman
Subcommittee on the Constitution
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City of Richmond v. J.A. Croson Company, _____ U.S._____, _____, 109 S. Ct. 706, 719 (1989).

What Professor Tribe did not cite in his letter to Senator Kennedy is the next paragraph of Justice O'Connor's opinion:

> The mere recitation of a benign or compensatory purpose for the use of a racial classification would essentially entitle the States to exercise the full power of Congress under § 5 of the Fourteenth Amendment and insulate any racial classification from judicial scrutiny under § 1. We believe that such a result would be contrary to the intent of the Framers of the Fourteenth Amendment, who desired to place clear limits on the States' use of race as a criterion for legislative action, and to have the federal courts enforce those limitations (citations omitted).
>
> We do not, as Justice MARSHALL's dissent suggests, see post, at 755-756, find § 5 of the Fourteenth Amendment some form of federal pre-emption in matters of race [quoting Morgan] . . . .

Id. at _____, _____, 109 S. Ct. at 719-20 (emphasis added).

Justice O'Conner's rationale in City of Richmond refutes Professor Tribe's argument rather than supporting it by concluding that no support is found in the Fourteenth Amendment for federal preemption by Congress.

It remains unclear, because of changes in the membership of the Court and in the absence of definitive adjudication, whether Professor Tribe's alleged expansion of Congress' power still commands a majority of the Court.

Professor Tribe then continues: "This possible rationale also suggests a novel but noteworthy source of congressional power entirely separate from the 14th Amendment." Obviously grasping at straws at this point, he states that there "might" be an argument that Congress could utilize the Republican Form of Government Clause (Article IV, Section 4). He then goes on to state that his "admittedly novel" application of the Clause is worth considering, despite the fact, as stated in his letter, that "the Supreme Court has repeatedly held that the Republican Form Clause is not a justiciable basis for invalidating . . . government arrangements at the state or local level . . . ." Notwithstanding his earlier admission that the Court is reluctant to involve itself in Republican Form of Government Clause matters, he says, in essence, So what? "[I]f the judiciary is committed to playing little or no role in this area, it follows that it should be particularly deferential to congressional

exercises of that power [no citations for this proposition are stated]."

It is strangely ironic to me how Professor Tribe can say one thing to Senator Kennedy concerning the Republican Form of Government Clause as a constitutional justification for S. 675 and yet say quite another to me and his other readers in his treatise:

> The most fundamental threats to state sovereignty---those that genuinely portend reduction of the states into "field offices of the national bureaucracy" or "bureaucratic puppets of the Federal Government"---would seem to arise less from federal laws that impose substantive constraints on both state and private actors alike . . . than from federal laws that restructure the basic institutional design of the system a state's people choose for governing themselves. If there is any form of congressional assault that might truly "'nibble away at state sovereignty, bit by bit, until someday essentially nothing is left but a gutted shell,'" it is an assault on those "democratic processes through [which] . . . citizens . . . retain the power to govern . . . their local problems. . . ."
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> . . . .
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> . . . [T]he authority to choose among [options concerning a state's governmental structure]---the authority to decide, consistent with equal protection of the laws, how one's people will represent themselves and participate in their own governance---seems the very essence of all self-government.
>
> . . . If courts are once gain to take up the task of preserving for states their constitutionally essential role as self-governing polities, the guaranty clause [Article IV, Section 4] might well provide the most felicitous textual home for that enterprise. L. Tribe, supra, § 5-23, at 397-98 (2d ed. 1988) (emphasis in original and also supplied).

Referring to the right of state and local governments (conceded in the third paragraph of page 1 of his letter) to conduct, within constitutional limits, their own elections without congressional interference, Professor Tribe describes such local activity as subsiding on a "more mundane level." As this "more mundane level" will, because of the states' constitutional right to regulate their own systems of voter registration, inevitably result in a bifurcation uncomfortable to Professor Tribe, he suggests a unitary system for voter registration at all levels.

He then concludes his letter by engaging in an allegedly constitutional recipe: combine the Necessary and Proper Clause (Article I, Section 8, Clause 18) and the plenary federal election powers (Article I, Section 4). After this mix is absorbed, Professor Tribe states that the unitary-at-all-levels-system of voter registration "may or may not be enough" to give Congress power to proceed but that it is an argument that has "some" constitutional force [once again citing no legal authority].

It appears that Professor Tribe has faithfully revered the sovereignty of the States in controlling state and local election processes, as evinced in his highly-regarded treatise:

> "Congressional action which treats the states in a manner inconsistent with their constitutionally recognized independent status . . . should be void, not because it violates any specific constitutional provision or transgresses the explicit boundaries of any grant of authority, but because it would be contrary to the structural assumptions and the tacit postulates of the Constitution as a whole." L. Tribe, supra, § 5-20, at 379 (emphasis added).

See also The Federalist No. 46 (J. Madison).

Unfortunately, Professor Tribe did not apply this same deference in the analysis set forth in his letter to Senator Kennedy.

Perhaps, Professor Tribe himself sums up my feelings best in his treatise wherein he states:

> "The issue is not whether federalism is a popular notion, or whether its proponents are in step with the zeitgeist, but whether principles of federalism are implicit in our national charter. If tacit postulates of federalism are indeed ingrained in the Constitution, courts are not free to dismiss them out of hand as ghosts or spirits in which no one any longer believes." L. Tribe, supra, § 5-24, at 400.

Congress is no less constrained to honor and adhere to the principle of federalism which reserves to Texas, and all the States, the right to regulate voter registration.

I wish to thank you for the courtesy and consideration you extended to me when I testified before the subcommittee on S. 675, and for your giving me this opportunity to reply to Professor Tribe's letter. I would appreciate your entering my response in the record of the hearings on this bill.

ATTACHMENT "B"

Response to Written Questions
Submitted by the Subcommittee

1. What can we do to ensure greater voter participation and greater voter access?

Answer: I must point out that there are two distinct, and unrelated, aspects of this question. The words voter participation are used customarily to mean voter turnout on election day, while voter access customarily refers to voter registration procedures.

Because the stated purpose of S. 675 is to eliminate discriminatory barriers to voter registration, the pertinent question is what can be done to ensure greater voter access? The procedures suggested in Section 5(d) involving registration by mail, agency based registration, and "motor voter" registration each are important, and effective, means of achieving greater voter access. Texas state law already incorporates each of these procedures.

A far different inquiry is what methods are effective to increase voter turn-out/participation on election day. Voter apathy is certainly the single most important reason why people who are eligible to vote choose not to vote. Unless and until a voter becomes more interested in candidates and ballot issues, or believes that the minimal effort required to vote is necessary and worthwhile, no myriad of schemes which can be devised through either federal or state legislation can compel greater voter turnout or participation.

During the sub-committee hearings on S. 675 conducted on May 10, 1989, Senator Kennedy defended the right of all persons not to vote as a valid expression of dissatisfaction with candidates and the political process. Senator Kennedy zealously defended the right of every person not to vote as the reason to prohibit any system designed to "purge" voter registration rolls due to non-voting.

I am confident that Senator Kennedy, and any other person who opposes voter registration purges due to non-voting, will just as quickly protect every person's right not to vote even if the exercise of the right not to vote would defeat a legislative scheme designed to increase voter participation.

Texas provides open voter registration, and encourages and promotes procedures to maximize voter participation. At the same time, Texas has established a 30-day pre-election day registration deadline which protects its legitimate and compelling state interest in the "purity of the ballot box". This compelling state interest, as granted in the Constitution and as affirmed by the Supreme Court, has been fully briefed in the written testimony of Secretary of State Jack M. Rains submitted to the Subcommittee on May 10, 1989.

The proposal in S. 675 for same-day election day registration would subvert Texas' compelling interest in maintaining accurate voter registration rolls. If same-day registration were permitted, such a system would not effectively promote voter access. Rather, same-day registration would be manipulated as a convenient device for candidates and interest groups who would mobilize and transport to the polling place as many people as could be herded onto a bus. Fair democracy must never be sacrificed in the pursuit of full democracy.

2. How can we do this without the abuse of the electoral system (voter fraud, etc.)?

Answer: Registration by mail, agency-based registration and "motor voter" registration can be effectively used without the potential for abuse of the electoral process. Texas already utilizes these mechanisms as discussed in the answer to Question #6(a) below.

It is impossible to implement same-day election day voter registration without sacrificing either (1) secrecy of the ballot as well as the integrity and accuracy of voter registration rolls, or (2) timely, final election results. This is discussed more fully in the answer to Question 6(b) below.

3. What are the reasons that persons in Texas don't register to vote?

Answer: The reasons that persons in Texas, and in all other states, do not register to vote are the same reasons persons do not vote on election day, and include the following:

(1) voter apathy, due to either a lack of interest in the political process, or a belief that the process does not merit the minimal effort of participation;

(2) lack of interest in the candidates that are running for office;

(3) disaffection with candidates and the political process due to negative campaigns.

The procedures suggested in S. 675 would do nothing to change the reasons why people don't register; therefore, S. 675 would do nothing to increase participation. The benefit of better voter registration programs, like that used already in Texas, is to better afford the opportunity to register and to vote.

4. In your view, do voter registration requirements in Texas create barriers to registration on the basis of race, ethnicity, handicap, or gender?

Answer: No. Texas voter registration requirements apply equally to all persons regardless of race, ethnicity, or gender. Furthermore, Texas uses many mechanisms to affirmatively target and register voter groups in order to prevent any latent discriminatory impact on those groups of persons. These voter registration procedures are more fully explained in the answer to Question #6a.

5a. What are the current Texas rules on removal of voters from registration rolls and election day challenges?

Answer: Under Texas law, voters are removed from the registration rolls when any of the following occur:

- the registrar receives an abstract of the voter's death certificate (sent monthly by the registrar of deaths), an abstract of application for probate of a will or administration of a decedent's estate (sent monthly by the court clerks), or information furnished by the Bureau of Vital Statistics relating to deaths (sent monthly by that agency); also, when the voter registrar has personal knowledge that the voter is deceased, or the registrar receives from a person related within the second degree on consanguinity or affinity to the voter a sworn statement indicating that the voter is deceased;

- the registrar receives an abstract of final judgment of the voter's mental incompetence (sent monthly by the court clerks);

- the registrar receives an abstract of final felony conviction (sent monthly by the court clerks);

- the registrar receives notice that the voter has applied for a limited ballot in another county (sent by election officials upon receipt of limited ballot application, indicating that the voter has moved to another county);

- the registrar receives notice from a voter registration official in another state that a voter has registered to vote in that state;

- the registrar receives a notice from the voter that he has moved to another county;

- the registrar receives a notice that the voter was adjudged not to be a qualified voter in an election contest (sent by court clerk when judgment in contest becomes final);

- the registrar, after investigation and notice to the voter, determines that the voter is not (or is no longer) eligible for registration;

Additionally, Texas updates registration rolls by removing the names of voters who have moved. Some states refer to this as a "purge." However, non-voting is never used as a criteria for dropping the name of a registered voter in Texas. A new voter registration certificate is mailed each odd-numbered year by non-forwardable mail, and if it is returned to the registrar by the post office (indicating that the voter no longer resides at the address at which he is registered) and if the voter does not vote in an election between January 1 and August 15 after the return of his new certificate by signing an affidavit that he still resides within the county or political subdivision, or otherwise notify the voter registrar of his new address, the voter's name is removed from the roll.

An additional protection for the voter is available through the "challenge affidavit" procedure. The Texas Election Code allows any person to execute an affidavit that he is eligible to vote, and upon making this affidavit he must be allowed to vote. Thus, any person who is eligible to vote will not be denied an opportunity to vote even if their name has been removed mistakenly from the registration roll.

5b. Why are they important?

Answer: The registration update/cancellation procedures are important because they are the only reliable means by which the state protects its legitimate interest in the "purity of the ballot box." These procedures keep the election records current so that eligible voters are voting on the issues that affect them and for the officers that will represent them.

The "challenge affidavit" procedure is an important protection for voters because it allows a person to vote when a clerical or postal error has caused the voter's name to be mistakenly removed from the poll.

6a. Do you have practical or other concerns about the voter registration devices that Section 5(d) of the bill suggests may be required by the Attorney General? (e.g. same day as election registration; mail-in registration; registration by all public agencies, as well as volunteer private agencies; registration at the Department of Motor Vehicles.)

Answer: Texas agrees with, and already uses, each of the suggested means except election day registration. We provide registration by mail, postage-free. Public agencies in Texas, including the Department of Motor Vehicles, and other state and county agencies, provide postage-free voter registration applications at their offices for persons who wish to register. Registrants complete applications at the time they go to the

agency, e.g. when renewing a driver's license, and then mail them to the county voter registrar. We also have volunteer deputy registrars, deputized in each county by the county voter registrar, who provide applications to persons who wish to register to vote, assist them in completing the applications if necessary, and deliver the completed applications to the voter registrar. Each high school principal in the state is designated as a deputy registrar and makes registration materials available to students who are 18 or almost 18 and to graduating seniors. Finally, voter registration efforts targeting minority groups are performed in cooperation with organizations such as MALDEF and the NAACP.

We are adamantly opposed to same-day election day registration because our current voter registration laws and procedures make it easy to become registered to vote. Furthermore, an election day registration system would be an administrative nightmare in a state the size of Texas. Specifically, we are concerned that there would be no opportunity for verification of a voter's qualifications prior to election day, which would make it more likely that unqualified, ineligible persons would be participating in the election process. To verify a voter's eligibility after the election, the voter's ballot would have to be segregated, with the voter's name attached, until such verification could occur. Therefore, we would necessarily sacrifice either secrecy of the ballot or timely, final election results. Until a voter's name was no longer attached to his ballot, the ballot could not be counted without violating the secrecy of the ballot. The counting of the ballot would have to be delayed until the voter's qualifications were verified. The segregation of the ballots, and collecting and attaching the information necessary to verify the voter's eligibility would be very time-consuming both on and following election day, and would

require more polling place workers, larger polling places to accommodate them, and more time. Long lines at polling places would result, and, inevitably, voters would be disfranchised when they were unable to wait in line.

A reasonable pre-registration deadline, such as the 30-day period used in Texas, allows county officials to better anticipate voter turnout so they can make adequate preparation to handle the number of voters expected. Inadequate preparation for a large voter turnout causes long lines at polling places and, inevitably, disfranchisement of voters who are unable to wait in line. The 30-day pre-election deadline for registration is reasonable and necessary to protect the state's compelling interest as explained in our legal brief and written testimony which was submitted on May 10, 1989.

6b. Is there potential for fraud in these devices? What about the cost and administrative efficiency?

Answer: Same-day election day registration has great potential for fraud because there is no period for verification of the voter's eligibility prior to the election. Under Texas' current system, eligibility of voters is policed not only by election officials, but also by other interested persons (such as court clerks, etc.; see answer to Question #3). These sources of information about eligibility of voters could not be reviewed and updated under a system of election day registration. Since election officials cannot possibly have personal knowledge about every voter's eligibility, this increases the voter registrar's work in performing verification and increases the cost of operating the voter registrar's office.

The Honorable Paul Simon
Chairman
Subcommittee on the Constitution
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7a. Americans move frequently. Is it inappropriate for a state to remove a voter from the rolls if he or she has not voted for a certain period of time?

Answer: Texas does not remove voters from the rolls for failure to vote! However, the question refers to "moving". I would point out that a person who moves out of the county would no longer be eligible to vote in that county. The procedure in Texas to mail new certificates every two years is an effective means of updating registration rolls. Also, a sufficient opportunity is provided to permit the voters, who may be unaware that they have been cancelled, to re-register in time to vote in an election in which they are interested.

7b. If a voter list is too cluttered with persons who aren't living where they are listed as registered, is the political process adversely affected?

Answer: The fact that a list is cluttered with names of ineligible persons is not, in itself, a problem. The potential for fraud and other problems arise when these persons present themselves to vote in an election on local issues or offices, and when other persons claiming to be these persons present themselves to vote. In Texas, we utilize procedures other than the purge for non-voting to clean up our voter registration rolls, and we find these procedures to be effective and yet safeguard the right to vote of any person who might have been cancelled mistakenly from the rolls.

7c. What would be the cost of obtaining "satisfactory assurances" that a voter has died or changed voting residence before he or she is removed from the rolls?

Answer: The procedures used in Texas to update voter registration rolls are relatively inexpensive. These procedures also provide "satisfactory assurances" that a voter has died or

changed his residence before he is removed from the registration rolls. In Texas, notices of deaths are forwarded to the voter registrar monthly from several sources--the registrar of deaths (who keeps death certificates), the clerks of probate courts, and the State Bureau of Vital Statistics (through the Secretary of State). These notices are sent on forms prescribed by and available from the Secretary of State. A voter's registration may also be cancelled if the voter registrar has personal knowledge of his death or if a close relative files an affidavit that the voter is deceased.

Under Texas law, when a voter moves temporarily, he may maintain his voting residence at his former address so long as he has the intent to return. Therefore, to obtain "satisfactory assurances" that a voter has changed his voting residence, we rely on notice from the voter himself, notice from another election official that the voter has registered or offered to vote in another county or state, or an investigation and hearing following a challenge by the registrar or another voter.

To obtain information about voters who have moved, we also rely on the bi-annual mailing of new voter registration certificates. The voters whose certificates are returned as undeliverable by the post office are given a special status, and when they present themselves to vote during the next 8 1/2 months, they are asked to complete an affidavit that says they still live in the county or political subdivision. The affidavits are returned to the voter registrar, who uses them to update the voters' registration. A voter who has this status will be cancelled if he does not provide the voter registrar with information about his new address, either by voting in one of the elections held during this period or by otherwise notifying the voter registrar in writing before August 15 of the year following the return of his voter registration certificate. Persons cancelled

because of postal or clerical error are automatically reinstated when the error is discovered. We believe this procedure provides "satisfactory assurances" that a voter has changed voting residence before he is cancelled. Texas has accepted the cost of mailing new certificates every two years which is certainly higher than the cost of simply using a purge for non-voting.

8. Is the state of Texas capable of conducting an open registration process without the federal government enacting further legislation?

Answer: Unequivocally yes--and past performance is the irrefutable evidence. Most of the "changes" proposed by federal voter registration legislation such as S. 675 would not be a change for Texas. However, the proposed system of election day registration, which may be considered the most "open" system of registration, would be a costly, administrative nightmare for the State of Texas, and would inherently create the potential for vote fraud. If the State of Texas determined such a system to be practicable and effective, Texas would take the lead to enact laws implementing the process, as it already has for other processes, without intervention by the federal government. Our record of initiating innovative changes in the area of voter registration is positive and would serve as a better model than S. 675 for implementation by all states.

Senator SIMON. Thank you.

Mr. Fein, I understand you are the cleanup hitter here today.

STATEMENT OF BRUCE FEIN, PRACTITIONER OF CONSTITUTIONAL AND COMMUNICATIONS LAW, GREAT FALLS, VA

Mr. FEIN. Yes; I understand it is a concession to the shortness of life that you are even able to make it here. I am sure you are as crowded for time as we are.

I would like to raise three issues of caution with regard to the enactment of S. 675. I think the goals are laudatory but the method may be constitutionally miscast.

The U.S. Supreme Court has clearly stated that without some past constitutional violation, Congress is without power to alter the rules regarding voter registration or indeed voter qualifications, because under the Constitution as ratified it was intended that the States would enjoy autonomy in those respects.

The Voting Rights Act of 1965 and its extensions have been built upon clear and uncontested findings of massive discrimination, purposeful discrimination, under the 15th and 14th amendments, and that provided the foundation for Congress to override some of the voter qualification rules, but there has not been any record developed by this Congress—and I think the statistics don't immediately support such a conclusion—that at present voter registration rules in the various States have either been enacted or are being maintained with the invidious purpose of discriminating on the basis of race, age, gender, or otherwise. Accordingly, those laws are constitutional.

If those laws have been enacted or maintained with an invidious purpose, then they can be struck down now. Senate bill 675 is unnecessary in order to justify a private plaintiff from invalidating those registration rules.

In the absence, then, of any finding of past unconstitutional discrimination regarding registration rules, what then is Congress attempting to do with this bill? I think the substance of the bill is to make a State registration rule that has a discriminatory effect preempted by Federal law whenever the Attorney General finds that there is not a sufficiently close parity of registration between white males and females, a parity of registration based upon age, ethnicity, minority status, or otherwise. But simply because there is an effect that has a discriminatory statistical result is not enough to invalidate a State law.

Now it may seem constitutional quibbling, but after all, the Constitution was based upon the idea that if its initial calculations as to what was good for the country were wrong, you needed a constitutional amendment to change that. The current bill basically puts Congress in the position of enacting a code of voter registration for the States, even though States have not been constitutionally illicit in the enactment or maintenance of those registration rules, and it further conscripts the State registration and election officials to administer the Federal standards.

That conscription of State officials also is constitutionally dubious. It is quite one thing for Congress to establish Federal registration rules and have Federal officials implement them. That, al-

though some degree of intrusion on State autonomy, is not the same as in fact requiring States to give their own election officials the duty of administering a Federal law.

The only Justice who has ever suggested that Congress has the power to establish Federal election rules for Federal officers is Hugo Black, in the 1970 decision of *Oregon* v. *Mitchell,* but Justice Black's opinion has never been joined by any other Justice. Accordingly, it seems to me that this committee would need to do far more factfinding. It would have to assemble far greater instances of purposeful illegal discrimination in the maintenance of voter registration rules to justify, under the Constitution, the enactment of S. 675.

I should point out that the Court has not only found that 30-day registration waiting periods serve a compelling State interest, but in one case in Arizona the Court found a 50-day waiting period served a compelling State interest.

Now aside from the constitutional problems, in the area of elections I think the need for certainty as to the legitimate winner of any election is especially important. That is one of the reasons why, I submit, many States have—because of their experience with the potential of voter fraud—have established methods of ensuring before votes are cast that there is little or no fraud, so that the voters instantly have confidence in the outcome. I think to have prosecutions after the fact isn't quite up to the needs of a political community. Where one's expectations that one individual has won are crystallized, it becomes very disturbing to try to undo the election.

Last, I would point out in the area of elections, I think the appearance of confidence of the local people in the fairness and outcome of the election is every bit as important as the substance. The legitimacy that the populace gives to an election depends very much on how fair that local constituency believes the election was run, and when the Federal Government trumps the State or local decision as to how registration ought to operate, I think that appearance and confidence is undermined.

Thank you, Mr. Senator.

[The prepared statement of Mr. Fein follows:]

STATEMENT
OF
BRUCE FEIN

ON THE EQUAL
ACCESS TO VOTING ACT
(S.675)

BEFORE THE SENATE
JUDICIARY SUBCOMMITTEE
ON THE CONSTITUTION

May 10, 1989

Mr. Chairman and Members of the Subcommittee:

I am grateful for the opportunity to testify on the Equal Access to Voting Act of 1989, a bill with the benign purpose of fostering nonfraudulent voter registration. Despite the laudable intent, the bill raises grave constitutional questions that should be carefully examined and debated before it traverses the legislative process.

I. FINDING AND PURPOSE

Section 2(a) of the bill makes a congressional finding that voter registration rules are discriminatory in impact on the basis of race, color, national orgin, age, and disability, and operate to deny the equal protection of the laws by foreclosing opportunities to exercise the franchise. The United States Supreme Court, however, has repeatedly declared that only intentionally discriminatory laws based on race or color violate equal protection norms absent a compelling government interest.[1] Adverse effects engendered by a statute do not offend the Constitution.[2] Further, classifications based on age or disability are not suspect under the Constitution and may be justified by rational government goals.[3]

In sum, the finding of section 2(a) can be justified only by adducing evidence that state voter registration laws were adopted or have been maintained for a racially invidious purpose, or that they intended to discriminate based on age, disability, or national orgin without any reasonable

justification. Congressional findings will command no judicial respect if unsupported by a reasonable assembly of data.[4] Bureau of Census data regarding the 1988 elections seem to categorically discredit a finding that existing registration laws discriminate against blacks or females. Voter registration rates were 67.9% for whites, 64.5% for blacks, 65.2% for males, and 67.8% for females. Additionally, states that authorize election day registration or no registration--Minnesota, Wisconsin, Maine and North Dakota--do not seemingly display percentage registration rates among the groups protected by S. 675 significantly different from corresponding nationwide percentages. That suggests voter registration rules are not discriminatory barriers to voting.

Section 2(b) is also legally problematic. It declares that barriers to voter registration must be lifted to secure the constitutional right of equal access to the ballot box. That right, however, generally safeguards only against intentional or irrational discrimination in voter registration rules. To justify section 2(b), Congress must elicit such evidence of invidious intent or irrationality. Moreover, if state voter registration laws are constitutionally flawed for these reasons, the adversely affected citizen enjoys standing to obtain a court order enjoining their use without the enactment of S. 675.

Section 2(c) identifies the purpose of the Act as insuring

equal voting irrespective of race, color, national orgin, sex, age, or disability. Why the classification of sex is added to subsection (c) is puzzling because previous findings exclude gender-based discrimination as a constitutional violation. Further, the purpose elaborated in section 2(c) seems constitutionally illegitimate. As the Supreme Court explained in Katzenbach v. Morgan,* Congress may proscribe constitutionally valid state laws only if there is a plausible nexus between the prohibition and constitutional infractions. Subsection (c) does not expound such a nexus, and one is not self-evident.

II. REVIEW OF STATE VOTER REGISTRATION PROGRAMS

Section 3 instructs the Attorney General to supervise the overhaul of state voter registration requirements quadrenially to remove those with a "discriminatory impact on the basis of race, color, national orgin, sex, age, disability, or other factors." But such state registration laws are constitutionally impeccable. Congress cannot preempt them based solely on discriminatory impact, or mandate the Attorney General to accomplish the same result. There must be some nonfrivolous link between the voter registration rule and constitutional transgressions to sustain section 3. That link, at present, seems wanting.

Moreover, at present 18-24 year olds register at a 48.2% rate, compared with a 78.4% rate for the elderly 65 years or older. How can the Attorney General eliminate the disparity

which is universally attributed to lesser political interests and involvement of the youthful voter?

III. SUBMISSION OF STATE PLAN

Section 4(a) coopts state election officials to draft revisions of state voter registration rules that are constitutionally valid but have adverse impacts on specified groups. Voter registration rules are automatically tainted if the ratio of minority to nonminority registration rates falls below a percentage stipulated by the Attorney General.

Section 4(a) is constitutionally flawed in several respects. It nullifies constitutional state voter registration laws without any finding of past unconstitutional violations. It is thus not remedial in the constitutional sense as is the current Voting Rights Act.[6]

The section also delegates to the Attorney General unguided discretion to find barriers to voter registration. But Congress is constitutionally obliged to provide some reasonably ascertainable standard to executive officials when legislative power of the type in section 4(a) is delegated.[7]

The section also mandates that state officials implement a federal statute where the state has committed no wrong, and is not discriminating against any federal interest.[8] That mandate unconstitutionally conscripts state election officials to administer a federally dictated voter registration system in violation of the Tenth Amendment. The conscription is especially burdensome because seperate voter registration

provisions may be applicable to state elections under state law.

Section 4(c) in essence compels a state to administer federally prescribed voter registration rules so long as minority and nonminority registration rates fail to satisfy whatever ratio the Attorney General chooses. But if that ratio is not tailored to offset only the effects of past illegal racial discrimination, it would be unconstitutional. Additionally, it seems illogical to authorize a state to "bail out" of the Act's nondiscrimination provisions based on age, sex, disability, and national orgin because of satisfactory minority registration rates.

IV. STATE PLAN PROVISIONS

Section 5(a) insists on state voter registration plans that yield a parity of registration rates for minorities and nonminorities. But that demand is not calculated to dissipate the effects of past illegal discrimination. It is likewise not tailored to preventing unconstitutional voter registration laws because the latter pass muster if not tainted by a discriminatory intent. Accordingly, section 5(a) seems beyond of Congressional power because the link between past unconstitutional action and remedy seems missing.

Further, it seems empirically questionable to assume that voter registration rates based on race, color, national orgin, age, sex, and disability will be identical absent illegal discrimination. For instance, the elderly will invariably

register more frequently than youth because of their greater interest in the outcome of elections. And the relatively low Hispanic registration rate--35.5%--may be caused by a disproportionately large percentage of youth in the Hispanic community compared to other racial groups. Yet section 5 seems to compel elimination of any voter registration rule if registration parity is not achieved.

VI. REMOVAL AND CHALLENGES

Section 6 prohibits state plans from purging voter registration lists periodically to safeguard against fraud or otherwise. But the bill makes no finding that such purging violates the Constitution or invariably yields discriminatory effects on its protected groups. Absent such findings, it would seem beyond the power of Congress to proscribe voter registration purges as a remedial measure for illegal state action. That reasoning also casts a cloud over the stipulated procedures for voter challenges under state law. Where is the evidence that prevailing state challenge laws are unconstitutionally discriminatory?

VII. ENFORCEMENT

Section 8(e) empowers any "aggrieved" person to initiate litigation to enforce the Act. But no definition of an aggrieved person is supplied. Supreme Court decisions, however, clearly establish that it may not include persons who have not suffered and are unthreatened with imminent concrete injury because of the challenged action.*

VIII. YEAR-ROUND REGISTRATION

Section 11 would compel state, local, and private agencies involved in voter registration to operate throughout the year. But no finding is made that such full-year operation is necessary to prevent unconstitutional action or even forestall discriminatory effects of voter registration rules. Section 11 is simply a federal voter registration rule for federal elections.

The section unconstitutionally commandeers state voter registration machinery to implement federal law, and steps beyond congressional remedial authority to rectify past voter registration illegalities.

CONCLUSION

A fragile Supreme Court majority sustained limited federal voter registration mandates in Oregon v. Mitchell.[10] There was no majority opinion. But that case did not affirm federal power to establish wholesale voter registration rules in federal elections for administration by state officials. Arguably, Oregon v. Mitchell would empower Congress to erect a federal voter registration code in federal elections under direct federal administration. But that is not what S. 675 attempts.

Moreover, in preserving constitutionally irreproachable but varied state voter registration rules in lieu of a procrustacean bed for all is valuable. Monolithic standards foster government overreaching that decentralized and varied

power centers do not. Further, the different political cultures and customs in the 50 states suggest the wisdom of varied registration rules to address the vote fraud evils that uniquely earmark their political scenes.

S. 675 would be a long step towards making states mere appendages of the Congress, and the loss of local solutions nicely tailored to fit local problems.

FOOTNOTES

1] Washington v. Davis, 429 U.S. 229 (1976)

2] Id.

3] Massachussetts Bd. of Retirement v. Murgia, 427 U.S. 307 (1976); City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985).

4] Shurburg Broadcasting v. F.C.C., No. 84-1600 (D.C. Cir., March 31, 1989) sl. op. 43-45.

5] 384 U.S. 641 (1966).

6] South Carolina v. Katzenbach, 383 U.S. 301 (1965).

7] Schecter Poultry v. U.S., 295 U.S. 495 (1935); Skinner v. Mid-America Pipeline, __ U.S. __ (1989).

8] Cf. Testa v. Katt, 330 U.S. 386 (1947).

9] Warth v. Seldon, 422 U.S. 490 (1975).

10] 400 U.S. 112 (1970).

Senator SIMON. I thank you.

I guess there is concern on the part of some of us that that confidence is undermined when people don't have that right to vote, for whatever reason. On the constitutional question that you raised, I guess the courts will ultimately have to decide that. I think that you would be correct if it were strictly a race for Governor, county clerk, and that sort of thing. I don't think there is much question that we have the right to intervene where Federal officials are elected.

Mr. FEIN. Well, Justice Black in *Oregon* v. *Mitchell,* where that precise issue was raised, was the only one of nine Justices who took that position. Now it is true that subsequently we haven't had additional kinds of questions of that sort raised, but at least if we go on the basis of precedent, it is very dubious—and especially, Mr. Senator, because here it is not simply the Congress setting the standard, it is requiring the State officials to administer the Federal standard, which is a further difficulty which isn't present immediately in the Voting Rights Act.

Senator SIMON. I am not going to debate you right now. I would simply refer you to a letter that has been entered into the record from Professor Tribe at Harvard, which at least presents the other side of the argument here.

All of us, I think, want to make registration as accessible as possible without fraud. I think that is whether it is Mr. Fein or Mr. Parker or Ms. Simmons or who it is. What about this? Let's just say, Mr. Gahm, in the State of Texas you were to decide you have to register 30 days in advance, and anyone who doesn't register 30 days in advance has to go dip that finger in the inkwell. Is that offensive? It certainly would preclude fraud.

Mr. GAHM. It would add a tremendous amount of uncertainty and length of time in determining the elections. There is no question that, given sufficient time after the election day to validate the registrations that occurred up to and including election day——

Senator SIMON. Well, I don't know how they work in Texas, but when we come in to vote in Illinois, we check Makanda Precinct 2, and they check it. If someone would come in and say, "I am not registered. Here is something to show where I live, but I just want to dip my finger in the ink," it wouldn't slow down the process at all.

Mr. GAHM. Senator, we have somewhat a similar arrangement in Texas, although we do employ a 30-day pre-election day cutoff for registration, but when you come to the polling place, you still verify your residence within that voting precinct. You do that in one of two ways: first, demonstrating that your name appears on that registration list that has been validated during that 30 days. If your name does not appear, then you must sign an affidavit, which is a very easy process. You write your name on the line that is already provided, saying "I am a resident of this precinct and therefore qualified to vote here."

However, that necessarily subjects that voter to challenge later if it is determined that they were not qualified, and that can only be done by subsequent checking, so there already exist methods for that person to appear and to be able to vote if they say, "I am a

resident here." What we see, however, is that the system which currently exists to get the best possible registration list during that 30-day period presented, that would be destroyed completely if we went up with registration itself, not just appearance but registration, up to and including election day. We would have no ability to verify any of it.

Senator SIMON. Well, if you just had the registration up to the 30 days, and then you just had people come in, anyone who wasn't registered could come in and dip that finger in the ink. I am judging by Chicago, which has had a reputation of not having clean elections—but fraud is just a very, very rare thing now in the city of Chicago. My guess is, if that is true in Chicago, that is true elsewhere, even in Texas.

Mr. GAHM. Senator, I noted earlier, and it was Senator Specter who raised this particular point, I questioned maybe if there is a regional difference that is very real here. When you and Senator Specter have referred to fraud, I have understood it to be in reference to a political machine situation where that was organized. I think the Senator referred to it as fraud by the majority rather than by the minority.

I will tell you, as the assistant chief elections official of Texas, we do not see that type of fraud. The vote fraud which occurs is the inability to verify the individual voters who appear at the polling place, and it occurs not related to a particular minority but to individuals who are not registered nor qualified to vote, but who appear at a polling place and cast a vote without that qualification.

Senator SIMON. But my point is, if they don't try to vote in two different voting places, we ought to let them vote.

Mr. GAHM. Senator, you are exactly right there. My only comment to that would be, I am not opposing that in theory. I just want to point out to the committee that we cannot verify the election itself until we have then gone back, after election day, and crossed by computer check or whatever other means, all 254 counties in the State of Texas to ensure they did not vote in two places.

Senator SIMON. Well, I guess my belief is—and I don't mean any disrespect to Texas, because we have about the same population in Illinois and Texas—we have a system that isn't as cumbersome as yours. You could improve your system.

Unfortunately, I am already late for another meeting here.

Mr. FEIN. Could I just briefly amplify on your proposal, Senator, because I think there are at least two things that ought to be mentioned. One, with regard to qualifications, it may very well be that the individual is an illegal alien or is disenfranchised because of commission of a crime, those kinds of things, or perhaps not even sufficiently old. They may be under 18. Those kinds of issues couldn't be instantly spotted by those who are receiving the ballots.

Second, we know, unfortunately, that we have lead-footed justice, not mercury-footed justice, in the United States. It is just a fact of life. If someone does vote improperly, it may not be until years afterward, with long litigation, that there is a definitive determination. This shows, I think, some of the hazards of relying on a post-hoc remedy for fraud, as opposed to doing everything you can to screen out in advance even any claims of that sort.

One alternative that the committee might want to consider, in order to ensure that no voting registration rule is an unfair barrier to any group, is to provide the assistance of the Attorney General or even treble damages for anyone who is able to show that a registration rule has been enacted or is being maintained for a discriminatory purpose, so that the message will be sent out, any State that does indulge in such chicanery will have to pay for it.

Senator SIMON. Let me do this. You have been very patient to be here this whole afternoon like this. I would like each of you to submit for the record the answer to two questions. The legislation we have is not written in stone.

First, what can we do to ensure greater voter participation, greater voter access?

Second, how can we do it without the abuse of the electoral system, whether you want to call it voter fraud or what it is?

That, it seems to me, that is the aim we all have. My guess is we can find some agreement in what needs to be done.

Again, let me thank all of you for being very, very patient. You have been here since 1:30 this afternoon, and I am grateful to you.

The hearing stands adjourned.

[Whereupon, at 5:10 p.m., the subcommittee adjourned subject to the call of the Chair.]

APPENDIX

ADDITIONAL SUBMISSIONS FOR THE RECORD

American Citizens Together NOW!

P.O. Box 3788, Alhambra, California 91803
RESTORE FAIRNESS AND SANITY TO OUR IMMIGRATION POLICY!

April 27, 1989

Senate Sub-Committee on the Constitution
Senate Dirksen Building
Room 212
Washington, D. C. 20510

Dear Committee Members:

Our members have informed us that a hearing on the alarming bill, S 675, introduced by Senator Crantson is scheduled for May 10th.

We wish to voice our outrage at the consideration of any bill that would completely make citizenship meaningless. Any and all of the various bills under the umbrella of " Universal Voting Rights" do just that!

It seems inconceivable that Congressmembers are not aware of the fact that citizens are losing their rights and that we are the most unrepresented group in the country. Is it any wonder that people feel that our gorernment is our enemy and are losing interest in voting at all?

This bill is an insult to all veterans and their families and anyone who has made a contribution to this country in any way, even if only by having taxes confiscated! Surely one of the few remaining elements of dignity in being a citizen of the United States is the privelege of voting. When you remove that by making it possible and encourage non-citizens to vote, you further undermine the respect we have for Congress and its members.

We urge that this bill be discarded as it deserves and any similar ones in the future be summarily disregarded.

Sincerely,

Sonya Jason, President

Directors

Rod Irvine, Chairman — Sonya Jason, President — Francis M. Perry, Treasurer — Betty Belting, Secretary

OFFICE OF ELECTIONS ADMINISTRATOR
P.O. BOX 11149 1010 EAST 8TH
ODESSA, TEXAS 79761

TELEPHONE
AREA CODE (915)
335-3187

ECTOR COUNTY, TEXAS

May 2, 1989

Honorable Paul Simon, Chairman
Subcommittee on the Constitution
Senate Judiciary Committee
524 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Mr. Chairman and Members of the Subcommittee,

In reference to the "Equal Access to Voting Act of 1989" (S.675), I appeal to the committee that my statement be entered in the records for this hearing.

From the standpoint of an election official in the State of Texas, I believe this bill would bring extreme hardship on the election officials of this State.

Election day registration would leave the gates wide open for voter fraud, as accountability would be almost non-existent. The costs of conducting the elections would increase astronomically, because most certainly the amount of workers at the polling places would increase.

Texas voter registration laws demand very little from citizens in order for them to vote. Requiring a citizen to be registered thirty days prior to voting is time allotting the election officials to print voter certificates, to update any change of address information, and to have current lists printed.

I feel that this bill is arbitrary and too vague. What about the State's rights? I ask that you give this due consideration and do not take away Texas' prerogative to write its own registration laws. I simply and firmly do not believe that voter day registration is the answer.

I am enclosing 40 copies, should your staff be interested.

Sincerely,
Sharon Wilson
Sharon Wilson
Elections Administrator, Ector County
Odessa, Texas

cc: Tom Harrison, Special Assistant for Elections, Austin, Texas
Austin Bray, Staff Attorney, Austin, Texas

ECTOR COUNTY IS AN EEOC/AA EMPLOYER

UNITED STATES BORDER CONTROL

Statement of Erich Pratt,
Executive Director, U.S. Border Control,
Submitted to the
Subcommittee on the Constitution of the
Senate Judiciary Committee
on May 10, 1989

U.S. Border Control monitors voter registration bills because of their potential impact on non-citizens. A voter registration bill must be carefully crafted, otherwise it can endanger the integrity of our election process. If illegal or resident aliens are not prevented from voting then non-citizens could help defeat incumbent Congressmen in future elections. This would seriously undermine the American political process.

U.S. Border Control agrees with the proponents of S. 675: more citizens need to exercise their right to vote. However, easing registration requirements is not the answer to voter apathy. Voter registration laws are intended as checks against election fraud, not as barriers for qualified voters.

Voter Registration: A State Matter

U.S. Border Control opposes S. 675 for two reasons. First, this bill gives Congress a power reserved to the states. The

8001 Forbes Place • Suite 105 • Springfield, Virginia 22151 • 703/321-7878

power to regulate voter registration is a state matter, and for good reason.

If a state enacts lax registration laws and allows unqualified people to vote, then only that state will suffer. But if Congress enacts bad registration laws, then the entire nation suffers. The power to regulate voter registrations must remain a power to be exercised by the states and the people (10th Amendment).

Year-Round Voter Registration

Even more importantly, S. 675 would allow people to register on a year-round basis -- including election day. While this system may work in sparsely-populated North Dakota, it would open up a Pandora's box in Chicago.

Year-round (same-day) voter registration invites fraud since it could not prevent felons, non-citizens and other ineligible persons from casting their ballots on election day. Under such a system, voter eligibility would not be checked until after the election.

Truly, same-day registration defies all logic. For instance, no bank would allow an individual to approach a teller and demand "same-day, new-account cash." To retain their financial integrity, banks must first verify that checks deposited by a new customer are drawn on an account with sufficient funds. Proper verification is a forethought, not an afterthought.

Similarly, voters must be registered long enough before an election to allow time to verify each voter's eligibility. If non-registered people are allowed to vote, then the verification process becomes a post-election problem. At best, this opens the door to lengthy delays -- at worst, to massive fraud and corruption.

Endangering Incumbent Senators

Same-day voter registration in some states could have changed the outcome of recent elections. For instance, Senator Alan Cranston (D-CA) won his election race by 3% of the votes in 1986. According to the Census Bureau, there are over 2 1/2 million non-citizens (legal and illegal) in California. If only 105,000 (or .4%) of those aliens had illegally voted against Cranston, his opponent would have won the election.

Senator Connie Mack (R-FL) won his election in 1988 by only 34,000 votes. Census Bureau figures state that over 500,000 non-citizens reside in Florida. Vote fraud among just 10% of this group would have swung the election.

One must not think that election fraud could only occur in Mexico and the Philippines. Many will attest to election fraud even within U.S. borders. For example, citizens of Chicago have seen their share of "tombstone" voting, where people long since dead somehow show up to vote on election day.

Discrimination

The fact is lax registration requirements discriminate

against law-abiding citizens and favor corrupt political bosses who are willing to bus "voters" from one precinct to the next on election day. We do not need to return to the days of Tammany Hall and Pendergast.

In conclusion, more citizens need to vote. But allowing for fraud is not the answer to voter apathy. Instead of moving toward same-day voter registration, voter participation can be increased through better education. Finally, the states know best their individual needs, and thus are better equipped to control the registration process.

US CITIZENS, INC.

Testimony in Opposition to S.675,"Equal Access to Voting Act of 1989"
Subcommittee on Constitution, Committtee on the Judiciary
United States Senate
May 10, 1989

Mr. Chairman and Members of the Subcommittee, I am Martha J. Winans, Executive Director of US Citizens, Inc., a recently organized group of Americans concerned with preserving Citizens' rights. We are unequivocally opposed to S.675 as it will facilitate fraudulent alien registration. Also, the per centum mandate may consequently result in having to giving aliens the legal right to vote.

The proposition in S.675 that restrictions on voter registration have had a discriminatory effect on the basis of race, color and national origin is, in itself, false. Even proponents of universal voter registration argue socioeconomic conditions prevailing among minorities - not race - as limiting opportunities, but not access, to voter registration. All eligible Citizens have equal access to voter registration in states where they reside. Since passage of the Voting Rights Act, no Citizen - black, Hispanic or Asian - has been denied the right to vote because of race, color or national origin.

Indeed, the statute achieved its original purpose of bringing blacks into the electoral system early on, and has since become a powerful tool for affirmative action minority voter rights, which minorities include millions of alien racial and non-racial "language minorities". By creating safe seats for minority candidates, both alien and Citizen minorities are now assured a proportional share.

The presence of aliens has already significantly disenfranchised Citizen voters by dilution due to Census' inclusion of their numbers for reapportionment. One Texas State Representative admits his district was created because of illegal aliens alone. Between 1950 and 1980, the top six states attracting immigrants gained 16 Congressional seats they would not have had without international migration. Already these states control well over half of the electoral votes deciding the Presidency. In another 30 years, modestly projecting immigration at 750,000 annually, the same six states will control 23 more seats.

Proponents argue voter registration has been declining. However, 1988 state figures belie that argument. Between 1980 and 1988, according to the report, voting age population increased by some 18 million persons, and the percentage of registered voters increased accordingly - in spite of very conservatively estimating immigration at 5.8 million during those years. But, even with increased, easier registration, voter turnout, particularly minority turnout, has declined dramatically. In 1964, voter turnout was 62%, in 1988, 50%. Most experts agree facilitating registration does not increase voter turnout - and the reason is disenchantment, not disenfranchisement. But increasing minority registration is not the real reason for this bill. The real reason is increasing minority turnout. Since S.675 will assure minority registration, special interests can concentrate on minority turnout - laudable if all minorities were citizens, but millions aren't.

Immigration and voter registration drives are the major reasons registration hasn't declined, and because citizenship is not confirmed in states where immigrants concentrate, hundreds of thousands of aliens may have accidentally, illegally registered in such drives. In 1985, over 3000 aliens were registered in just four Chicago wards. In California - where 75% of the population growth the last 14 years has been due to legal and illegal immigration - 1.5 million persons were registered in just five months last year just before the election. And anyone who believes they were all of them Citizens is either very naive or purposefully ignorant.

Some aliens are less accidentally registered. Networking special interest groups - the same ones who support open borders - seeking political empowerment concentrate drives in low-income, minority areas with large alien populations - generally politically ignorant, less educated, non-English speaking populations supporting causes primarily because of racial and ethnic identification. Targeted drives have also registered millions - even fewer of them Citizens. Between 1976 and 1986, i.e., Texas Hispanic registration was commensurate with Hispanic population growth even though hundreds of thousands of legal and illegal aliens contributed to that growth.

Not only have aliens illegally registered, thousands illegally vote. In 1988, one election official estimated 20% of those voting in just one east Los Angeles polling place were aliens. In 1982, a survey of bilingual ballots from 9 California counties revealed 45% from aliens. In 1983, thousands of illegal aliens voted in the Chicago mayoral elections. In Maverick County, Texas, aliens are busloaded across the Rio Grande to vote.

However, S.675, ostensively an affirmative action minority voter registration rights bill, could end up like the Voting Rights Act advantaging both Citizen and alien minorites. As Census does not separate aliens from Citizens in voting age population figures, by mandating per centum minority registration - minorities which include millions of alien racial and non-racial "language minorities" - at or above nonminority levels, S.675 guarantees disparities in states attracting immigrants - namely, California, Texas, Florida, Illinois and New York, and New Jersey.

In the last five years alone (five years residency required for citizenship), over 85% of legal immigration has been Asian and Hispanic, and illegal immigration overwhelmingly Hispanic. Howver, while only about 25% of eligible Hispanics ever become Citizens, they represent over 21% of the voting age population in California and Texas. Per centum minority level in immigrant states, therefore, will be disproportionally weighted with alien minorities.

Not only will continued uncontrolled immigration and alien minority birth rates exacerbate the disparity, other non-racial "language minorities" could be added to the Voting Rights Act. Thus, to achieve per centum registration of minorities in immigrant states, the Justice Department could require states to register aliens.

In brief, alien numbers will be included to set per centum minority registration levels, but aliens can't legally register. A disparity will exist and the Attorney General is forced to require the state to

eliminate the disparity. The only possible remedy would be for the state to give aliens - the only reason for the disparity - the legal right to register and vote. US Citizens sees no other alternative at this time. And states can. A Justice Department "brief" has affirmed that there is nothing in the Constitution to prevent states from giving aliens the right to vote. And if they do, those aliens will be equally qualified to vote in federal elections.

Although it cost lives and took Constitutional amendments to achieve equal voting rights for minority U.S. Citizens, passage of S.675 will take them away with a stroke of the pen. If minority aliens are required to register and vote, as we believe they will have to be to achieve per centum levels based on Census numbers (which does not and cannot separate aliens from Citizens at this time), minority U.S. Citizens will have no more voting rights than someone who illegally walks across the border and registers to vote.

Even eliminating the per centum mandate will not prevent alien registration. Enforcement provisions do not prevent voter fraud, and won't prevent alien fraud. There are penalties for illegal immigration too, yet millions of illegal aliens have been rewarded with amnesty, asylum and safe haven. For years, illegal aliens have used voter registration cards for identification, and only recently, with impunity, to prove residency for amnesty. Penalty of perjury clauses mean nothing - false documents have them too, also not enforced. Alien registration by mail, or at thousands of public service and private agencies, stands almost no chance of discovery, much less challenge, should someone even dare - the penalties and lawsuits in S. 675 for unproven challenges are severe, and false documents legion. Indeed, a recent attempt by the Texas Secretary of State to crack down on alien fraud has resulted in lawsuits, as did a similar effort in California. At public agencies, voter education will translate into voter persuasion, and private agencies will illegally register aliens just as deliberately as they filed false applications for amnesty. Eliminating purges will only make fraudulent registration permanent.

Even without the per centum mandate, opportunies to register under this legislation are so proliferate, it is inevitable aliens will register to vote. And it is just as inevitable that if registered aliens are encouraged, paid, or coerced to vote, as they have been to register, they will vote, resulting in massive fraud. As a consequence, Citizen voters may be even more disenchanted.

If registration is to be on a per centum basis, voting age legal and illegal alien numbers will have to be accurately separated from Citizens by state before establishing per centum levels - and, due to immigration, this will have to be done not less than once every four years, the time set for review. If it is to be permanent, it is not unreasonable to require, on a one time basis, birth certificates, passports, or naturalization papers as proof of citizenship. Even if with false documents, it should be a deterrent.

Secretaries of State can tap into INS computers to confirm naturalization of the foreign born. And before considering universal voter registration, Congress would serve U.S. Citizens far better by mandating a national fraud proof identification card stating citizen status. Congress could even first consider legislation making

citizenship applications and information as available to alien minorities it wants to make voter registration.

No Citizen is required to vote. Minority Citizens, free to choose not to vote, should be equally free to choose not to register. It is not the duty of the federal government to force the choice at the expense of U.S. Citizens who will pay millions for S.675 - paying for illegal alien registration if the per centum mandate is deleted, and, in all probability, eventually paying for legal alien registration if it remains. Therefore, US Citizens strongly opposes S.675, until the per centum mandate is removed, and some way is found to confirm citizenship.

About the only remaining difference between Citizen and non-Citizen rights left anymore is the right to vote, and it should not be cheapened by equating it with drivers licenses, welfare, unemployment and food stamps - equally available to and claimed by millions of legal and illegal aliens. While amnesty gave millions of illegal aliens the right to participate in citizenship, this legislation will give all aliens the right to participate in our elections, however, illegally.

Just as America has lost control over its borders and immigration policies, Citizens will lose control over their elections if this legislation becomes law. Both minority and nonminority Citizens will find citizenship worthless - unless they want to run for Congress or President. And if they are't minorities, they probably won't be elected. Racial and ethnic roots decide factor elections, not citizenship - an awesome, distant cry from the intent of the founding fathers, and a sad, final finish to value of U.S. citizenship.

Thank you for your time and attention to US Citizens' contraposition on this most far-reaching and important .egislation.

TESTIMONY OF

JIM SMITH
Secretary of State
State of Florida

BEFORE THE

Senate Judiciary Committee
Subcommittee on the Constitution
Washington, D.C.

MAY 10, 1989

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE ...

I AM JIM SMITH, SECRETARY OF STATE FOR THE STATE OF FLORIDA AND ITS CHIEF ELECTION OFFICER.

I BECAME SECRETARY OF STATE IN 1986 AFTER SERVING EIGHT YEARS AS FLORIDA'S ELECTED ATTORNEY GENERAL.

I'D LIKE TO BEGIN WITH A STATEMENT ABOUT VOTER PARTICIPATION IN FLORIDA.

LIKE MANY STATES, FLORIDA HAS BEEN EXPERIENCING VERY POOR VOTER TURNOUT. SINCE 1970, IT AVERAGED 33 PERCENT FOR REGISTERED VOTERS IN FIRST PRIMARIES AND 28 PERCENT IN SECOND PRIMARIES.

WE DON'T LIKE THOSE NUMBERS.

IN GENERAL ELECTIONS SINCE 1970, IT AVERAGED 66 PERCENT, GOING TO 75 PERCENT ONLY IN PRESIDENTIAL ELECTION YEARS.

IN 1988, ABOUT HALF OF THE CITIZENS OF FLORIDA WHO ARE ELIGIBLE TO VOTE DID SO. WE HAVE SIX MILLION REGISTERED, 9.6 MILLION ELIGIBLE.

WE DON'T LIKE THOSE NUMBERS, EITHER.

SO WE COMMISSIONED A STUDY OF VOTER REGISTRATION AND TURNOUT BY FLORIDA ATLANTIC UNIVERSITY. MR. CHAIRMAN, A COPY HAS BEEN GIVEN TO THE SUBCOMMITTEE.

THE PRINCIPLE FINDINGS WERE THESE:

-- THE SINGLE MOST IMPORTANT CAUSE OF FLORIDIANS FAILING TO REGISTER WAS DISINTEREST IN PUBLIC AFFAIRS OR A NEGATIVE ATTITUDE TOWARD GOVERNMENT..

-- AMONG REGISTERED VOTERS, THE OVERRIDING CAUSE OF FAILING TO VOTE WAS DISINTEREST

-- FEAR OF JURY DUTY WAS A SIGNIFICANT CAUSE OF NON-REGISTRATION.

-- A THIRD OF THE NONREGISTERED WERE UNAWARE THAT REGISTRATION IS NECESSARY.

-- MORE PEOPLE WOULD REGISTER IF IT WERE MORE CONVENIENT, BUT ABOUT HALF OF THE UNREGISTERED SAID THEY WERE NOT INTERESTED AT ALL.

-- REGISTERED AND UNREGISTERED RESPONDENTS EXPRESSED A HIGH REGARD FOR ELECTION OFFICIALS AND THE ADMINISTRATION OF ELECTIONS.

NOBODY SAID ANYTHING ABOUT BEING RESTRICTED IN THEIR RIGHT TO REGISTER BY DISCRIMINATORY ACTIONS LINKED TO RACE, AGE, NATIONAL ORIGIN, DISABILITY OR ANYTHING ELSE.

HAVING READ SECTION 2-A OF THE SENATE BILL ON THE TABLE, I AM STUNNED BY THE SCOPE OF WHAT ITS SPONSORS WOULD HAVE THE FEDERAL GOVERNMENT DO.

WHERE IS THE EVIDENCE TO JUSTIFY WHAT IS ESSENTIALLY A PROPOSED FEDERAL PREEMPTION OF VOTER REGISTRATION IN THE UNITED STATES?

WHERE ARE THE COMPLAINTS, THE CIVIL RIGHTS LAWSUITS, THE MEDIA REPORTS, THE JUSTICE DEPARTMENT INVESTIGATIONS TO SUPPORT THE DISCRIMINATION ALLEGATIONS IN LEGISLATION?

AS FLORIDA'S CHIEF ELECTION OFFICER I PUSH VOTER REGISTRATION EVERY DAY. IT'S A HIGH PRIORITY IN MY OFFICE, WITH COUNTY ELECTIONS SUPERVISORS AND THE NATIONAL ASSOCIATION OF SECRETARIES OF STATE.

I FIND IT SURPRISING NOT TO HAVE HEARD ABOUT WIDESPREAD PROBLEMS WITH DISCRIMINATION IN VOTER REGISTRATION, IN FLORIDA OR OTHER STATES, PARTICULARLY IF THERE IS ENOUGH CONCERN TO GIVE BIRTH TO THIS BILL.

I HAVE TO ASSUME THAT THE EVIDENCE PROMPTING INTRODUCTION OF S-675 IS NOT PLENTIFUL ENOUGH TO WARRANT INTERVENTION BY THE JUSTICE DEPARTMENT, CIVIL SUIT OR COVERAGE BY THE NEWS MEDIA.

IF THAT'S THE CASE, WHY WOULD CONGRESS TAKE SUCH DRASTIC, COSTLY, SHOTGUN ACTION AS INVOLVING THE ATTORNEY GENERAL BY LAW IN ASSESSING, REVIEWING AND PRESCRIBING STATE VOTER REGISTRATION PROCEDURES TO REMOVE ALLEGED BARRIERS.

IN MY OPINION, THE PROPOSED ACT IS INTRUSIVE ON THE POWERS OF THE STATES AND, MORE TO THE POINT, UNNECESSARY.

THE REMEDIES SOUGHT ARE AVAILABLE IN FEDERAL DISTRICT COURT TO THE JUSTICE DEPARTMENT OR ANY INJURED PARTY.

PARTS OF THE LAW APPEAR UNENFORCEABLE. HOW DOES THE ATTORNEY GENERAL PROPOSE TO REQUIRE THE STATES TO REGISTER MINORITIES BY PERCENT?

DO WE TAKE THE UNREGISTERED INTO CUSTODY AND HOLD THEM UNTIL THEY AGREE TO REGISTER? DO WE IDENTIFY THEM AND ISSUE AN INVOLUNTARY REGISTRATION?

DO WE ASSIGN A PARTY AFFILIATION?

DOES A BELOW PERCENTUM MINORITY LOSE THE RIGHT TO DECLINE TO BE A REGISTERED VOTER?

THERE ARE OTHER PROBLEMS WITH THE BILL. THE DEFINITION OF "BARRIERS TO REGISTRATION" IS TOO VAGUE TO HAVE MEANING.

IS IT A BARRIER TO HAVE TO GO TO A REGISTRATION OFFICE? DOES CLOSING ON WEEKENDS CONSTITUTE A BARRIER? IF THESE ARE BARRIERS, AND THEY APPLY TO ALL CITIZENS, CAN IT BE DISCRIMINATION?

WHAT ARE THE LIMITS ON THE POWER OF THE ATTORNEY GENERAL TO ISSUE REGULATIONS? CAN HE REQUIRE THE STATES TO SPEND MONEY?

WHEN YOU TALK ABOUT DISPARITY BETWEEN GROUPS, AS THE STATUTE DOES, WHAT KIND OF REGULATION CAN BE DRAWN TO END IT? YOU CAN REQUIRE REGISTRATION TO BE AVAILABLE ON SUNDAY, BUT THAT WON'T REQUIRE PEOPLE TO REGISTER.

AND IF THEY DID REGISTER, HOW WOULD YOU PREVENT THE SAME DISPARITY FROM RECURRING. MORE VOTERS, SAME DISPARITY BETWEEN GROUPS.

THE BILL AUTHORIZES THE ATTORNEY GENERAL TO GO INTO FEDERAL DISTRICT COURT TO REQUIRE COMPLIANCE WITH A STATE'S PLAN. IT SEEMS TO BE A STATE'S FIRST DEFENSE WOULD BE TO CHALLENGE THE LAW ITSELF.

MY SUGGESTION, MR. CHAIRMAN, IS THAT CONGRESS EITHER PASS A LAW REGISTERING EVERY CITIZEN TO VOTE IN FEDERAL ELECTIONS BY SOCIAL SECURITY NUMBER, OR USE EXISTING CONSTITUTIONAL REMEDIES AGAINST DISCRIMINATION TO STOP THE PRACTICES IT PERCEIVES.

I FRANKLY THINK INSERTING A LAYER OF BUREAUCRACY, APPROPRIATING GRANT FUNDS AND OTHERWISE INTRUDING IN STATE FUNCTIONS IS EXTREMELY WASTEFUL OF TIME AND RESOURCES WHEN A MEANS TO THE SAME END IS ALREADY IN PLACE.

NO AMOUNT OF REGISTRATION WILL DO ANYTHING TO INDUCE VOTING WHEN THE PUBLIC IS DISINTERESTED, DISENCHANTED AND DISINCLINED.

YOU ARE LOOKING FOR PROBLEMS UNDER THE HOOD WHEN THE CAR IS MERELY OUT OF GAS.

YOU WOULD DO BETTER TO SPEND MONEY ON VOTER EDUCATION AND TAKE STEPS ON THE FEDERAL LEVEL TO REDUCE THE TIME AND COST OF CAMPAIGNING, WHICH IS ONE SOURCE OF PUBLIC DISGUST WITH POLITICS.

WE'RE TRYING TO DO SOMETHING ABOUT THIS IN FLORIDA.

I'VE PROPOSED LEGISLATION TO CHANGE THE SELECTION OF JURORS FROM VOTER REGISTRATION LISTS TO DRIVERS LICENSES, OFFICIAL STATE IDENTIFICATION CARDS OR PERSONS WHO SWEAR BY OATH THAT THEY ARE ELIGIBLE TO BE A JUROR.

IF THIS IS APPROVED, IT WILL BE TOUGH TO ALLEGE ANY BARRIER TO REGISTRATION -- AND I THINK WE'LL SEE STATES GRADUALLY GO THIS WAY. ANOTHER REASON TO FOREGO S-675.

FLORIDA FOR MANY YEARS HAS PERMITTED REGISTRATION BY MAIL. IN ADDITION, OUR LEGISLATURE IS PRESENTLY CONSIDERING A BILL TO MAKE OUR MAIL REGISTRATION EVEN MORE AVAILABLE.

I HAVE ALSO RECOMMENDED THAT FLORIDA PROHIBIT RAISING OR SPENDING CAMPAIGN MONEY BEFORE JANUARY FIRST OF THE YEAR IN WHICH THE ELECTION WILL BE HELD.

WHEN POLITICAL CANDIDATES ANNOUNCE TWO OR THREE YEARS BEFORE THE ELECTION, SPENDING AND FUNDRAISING ARE GOING TO BE THE DOMINANT ACTIVITY OF THE CAMPAIGN.

IF THE TIME IS SHORTER, SPENDING AUTOMATICALLY WILL BE RESTRAINED. THAT MAY LEAVE SOME TIME FOR THE ISSUES TO BE DISCUSSED. CONGRESS MIGHT CONSIDER THE WISDOM OF THIS IN FEDERAL ELECTIONS.

IN SUMMARY, S-675 IS OVERBROAD, OVERBLOWN, OVERKILLED. IT WILL CREATE MORE PROBLEMS THAN IT SOLVES. IT WILL HAMPER STATE ELECTIONS OFFICIALS IN SOLVING THE VERY PROBLEMS IT SEEKS TO CORRECT.

A JUSTICE DEPARTMENT ATTORNEY COULD WORK MORE EFFICIENTLY WITHOUT THIS BILL IN BRINGING PROBLEMS TO THE ATTENTION OF ELECTION OFFICIALS AND WORKING THEM OUT BEFORE TAKING LEGAL ACTION.

IF NOT, THERE IS ENOUGH LAW ALREADY ON THE BOOKS TO DEAL WITH SUCH EVENTS WHEN THEY OCCUR. WE DON'T NEED A LAW, AN APPROPRIATION, A STAFF AND ANOTHER FEDERAL NOSE IN STATE BUSINESS.

THANK YOU.

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